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1 UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF OHIO  
3 - - -  
4 EASTSIDE LINCOLN MERCURY, ET AL, )  
5 )  
6 PLAINTIFFS, )  
7 )  
8 VS ) CASE NO: 01CV00567  
9 )  
10 FORD MOTOR COMPANY, ET AL, )  
11 )  
12 DEFENDANTS. )  
13 -----

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12 DEPOSITION OF: ALLEN W. WALLS

13 CINCINNATI, OHIO

14 MARCH 13, 2003

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23 REPORTER: JILL M. DRAGON SANDY  
24 Dragon Reporting Service  
5551 Seville Court  
25 Cincinnati, Ohio 45247  
(513)574-8319

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1 The deposition of ALLEN W. WALLS, taken on discovery,  
2 pursuant to agreement of counsel as to time and place, in  
3 the offices of Baker & Hostettler, Suite 2650, 312 Walnut  
4 Street, Cincinnati, Ohio, on March 13, 2003, at 1:00 PM,  
5 upon oral examination, and to be used in accordance with the  
6 Ohio Rules of Civil Procedure.

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10 S T I P U L A T I O N S

11 It is stipulated by and between counsel for the  
12 representative parties that the deposition of ALLEN W.  
13 WALLS, the witness herein, may be taken at this time and  
14 place pursuant to the Ohio Rules of Civil Procedure,  
15 pursuant to agreement of counsel as to time and place; that  
16 the proof of the notary is waived; that the deposition may  
17 be recorded in stenotypy by the notary public, Jill M.  
18 Dragon Sandy, who is also the court reporter, and  
19 transcribed out of the presence of the witness, and that the  
20 deposition is required to be submitted to the witness for  
21 his examination and signature.

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1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFFS:

4 Mr. Gregory J. Berberich  
and

5 Mr. Lawrence A. Flemer  
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9

10 FOR THE DEFENDANTS:

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15 Mr. Steven D. Hengehold  
Rendigs, Fry, Kiely & Dennis  
Suite 900

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1 I N D E X  
2 CROSS-EXAMINATION BY: MR. BERBERICH  
3 PAGES 5 - 120  
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6 E X H I B I T I N D E X  
7 Marked on  
8 Plaintiff's Page  
9 10 - Letter to Mr. William Woeste, Jr., from  
A.W. Walls and Steve Carnegie dated  
September 13, 2002, with 4-page attachment 111  
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1 ALLEN W. WALLS,  
2 called on behalf of the Plaintiff, after having been  
3 first duly sworn, was examined and deposed as follows:

4 C R O S S - E X A M I N A T I O N

5 BY MR. BERBERICH:

6 Q. Mr. Walls, my name is Greg Berberich,  
7 and I represent Bill Woeste and Eastside Lincoln Mercury in  
8 a lawsuit filed against Ford, against Mr. Carter, against  
9 yourself, and against Mr. Riechert's dealerships.

10 I'm going to be asking you some  
11 questions this morning, or this afternoon, excuse me. If  
12 you don't understand my questions, just let me know and I'll  
13 rephrase or explain. Is that understood?

14 A. Yes.

15 Q. The most important rule is that you use  
16 words so that your testimony can be transcribed, instead of  
17 nodding or shaking your head. Is that also understood?

18 A. Yes.

19 Q. If you need to take a break at any time  
20 or for any reason, let me know and we'll take a break. No  
21 questions asked.

22 Could you please state your full name?

23 A. Allen W. Walls, W-A-L-L-S. Allen is

24 A-L-L-E-N.

25 Q. A-O --

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1 A. A-L-L-E-N, and my middle initial is W.  
2 Q. What is your business address?  
3 A. 46080 Parkway Drive, Mason, Ohio.  
4 Q. Do you know what the zip is?  
5 A. No, I don't.  
6 Q. What's your age?  
7 A. Fifty-five.  
8 Q. Do you have any plans on transferring  
9 from the Cincinnati region in the next, let's just say a  
10 year?  
11 A. No.  
12 Q. For whom do you work, or by whom are you  
13 employed?  
14 A. Ford Motor Company.  
15 Q. And how long have you been with Ford  
16 Motor Company?  
17 A. Thirty years.  
18 Q. Do you have any retirement plans?  
19 A. No.  
20 Q. So you plan on working until they throw  
21 you out?  
22 A. No.  
23 Q. Okay. What division of Ford or what  
24 part of the company do you work for?  
25 A. Ford Parts and Service Division.

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1 Q. Is that division also called FCSD?

2 A. Yes.

3 Q. How long have you worked for FCSD?

4 A. Thirty years.

5 Q. So you've never worked on the new

6 vehicle sales side?

7 A. No.

8 Q. Why don't give me a listing, from most  
9 recent to most distant, of the positions that you've held  
10 with FCSD?

11 A. Okay. The current position is regional  
12 manager, Cincinnati; prior to that is regional manager,  
13 Dallas region; prior to that was accessories business  
14 manager, in Detroit; prior to that was district manager in  
15 Buffalo, New York; prior to that was Indianapolis district  
16 manager; prior to that was service operations manager, New  
17 York; parts sales manager, New York; field service manager,  
18 New York; operations manager, northeast region; owner  
19 relations manager, Newark, N-E-W-A-R-K.

20 MS. MCNELLIE: And that would be New  
21 Jersey and not Ohio?

22 THE WITNESS: Yeah. They're both  
23 colorful.

24 A. Priority supervisor, Detroit; training  
25 publications manager, Detroit; parts and service zone

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1 manager in Newark, New Jersey; and owner relations analyst,  
2 Newark, New Jersey. That's It.

3 Q. And what is your highest completed grade  
4 of education?

5 A. College.

6 Q. And from where did you get your college  
7 degree?

8 A. Lincoln University, in Pennsylvania.

9 Q. What was your field of study?

10 A. English.

11 Q. Did you receive a Bachelor's?

12 A. Bachelor's.

13 Q. B.A.?

14 A. Yes.

15 Q. Have you had any training or education  
16 after your college English degree?

17 A. Yeah, Rutgers University, Master's in  
18 Business Administration, didn't complete it.

19 Q. How much of the course did you take?

20 A. Eighteen hours.

21 Q. Have you had any other training or  
22 education?

23 A. Yes, company-related training.

24 Q. And does Ford put on a variety of  
25 seminars for its employees?



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1 A. Yes.

2 Q. Do you have any experience performing  
3 automotive repair work?

4 A. Yes.

5 Q. What experience do you have?

6 A. During summers, when I was in college, I  
7 worked for gas stations in Waldwick, New Jersey, doing  
8 maintenance and light repair.

9 Q. And by maintenance, are you talking  
10 about things like oil changes and wiper blades and those  
11 types of things?

12 A. Yes.

13 Q. What does light repair refer to?

14 A. Light repair is water pumps, replacing  
15 water pumps, and that type of thing.

16 Q. What would heavy repair be considered?

17 A. Engine, transmission, rear axle type  
18 repairs.

19 Q. Like for instance today, if I were to  
20 ask you to repair a Lincoln Mercury Town Car transmission,  
21 that would be something that you would not be able to do  
22 yourself?

23 A. That's correct.

24 Q. Do you have any other auto repair  
25 experience, other than those summers?

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1 A. The diagnostic training through Ford  
2 Motor Company.

3 Q. What do you mean diagnostic training?

4 A. Well, to identify a likely cause of a  
5 problem with a component based on how it's demonstrated in  
6 the terms of operation.

7 Q. By diagnostic training, are you talking  
8 about the use of a machine to diagnose an error or a problem  
9 with a car?

10 A. No, that's just based on symptoms  
11 demonstrated by the component.

12 Q. What type of diagnostic training have  
13 you had, any particular courses or course names, or anything  
14 like that?

15 A. No. Transmission, but I don't know the  
16 course name at the time the training was conducted.

17 Q. What other training?

18 A. Engine operation.

19 Q. What does engine operation training  
20 consist of?

21 A. Identifying probable causes of an  
22 inoperative engine, or symptoms demonstrated by an  
23 inoperative engine.

24 Q. The training that you received from Ford  
25 on diagnostics and engine operation, were those done with

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1 live engines or live transmissions, or --

2 A. Yes.

3 Q. How long were those courses, in terms of  
4 time or duration?

5 A. A day.

6 Q. What was the purpose of you attending  
7 those training sessions?

8 A. So that we could assist the service  
9 managers and dealerships to identify issues that may be  
10 brought to their attention by customers with their vehicles.

11 Q. Okay. Were these training sessions to  
12 assist you in being conversant with service technicians  
13 about the mechanical components of the engine and  
14 transmission?

15 A. Yes.

16 Q. But even after the training that you've  
17 had in engine diagnosis and whatnot, that still doesn't  
18 qualify you to be a mechanic, for instance?

19 A. Correct.

20 Q. Do you have any other training or  
21 education?

22 A. No.

23 Q. Does the FCSD division in Cincinnati  
24 have any mechanics on staff?

25 A. No.

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1 Q. Where would you have to look inside Ford  
2 Motor Company in order to find mechanics?

3 A. Well, can you clarify what you mean by  
4 the term "mechanic?"

5 Q. Sure.  
6 I'm talking about somebody who knows how  
7 to fix a Lincoln Mercury product, who can actually get in  
8 there and get greasy and pull tools out and actually make  
9 repairs?

10 A. Okay. We use the term "field service  
11 engineers."

12 Q. All right. Where would I have to go to  
13 find a field service engineer?

14 A. I have field service engineers that work  
15 in the Cincinnati office.

16 Q. How many do you have in Cincinnati who  
17 are field service engineers?

18 A. Four.

19 Q. Who are they?

20 A. Chris Albrecht, Jeff Hazel, John

21 Centa, --

22 Q. How do you spell his last name?

23 A. C-E-N-T-A.

24 -- and Dennis Wilson.

25 Q. Are each of these gentlemen certified

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1 Lincoln Mercury technicians?

2 A. No.

3 Q. Have these gentlemen completed the  
4 master technician training program through Lincoln Mercury?

5 A. No, not through Lincoln Mercury.

6 Q. Through Ford?

7 A. Yeah.

8 Q. Are all these gentlemen certified Ford  
9 Master Technicians?

10 A. No.

11 Q. Okay. Who is a master technician, of  
12 that group?

13 A. They're not designated as master  
14 technicians. That's a designation for dealership mechanics.

15 Q. Okay. Have each of these gentlemen had  
16 at least equivalent training and education to what would be  
17 considered a Lincoln Mercury Certified Master Technician?

18 A. Yes, yes.

19 Q. Do these four field service engineers  
20 perform warranty audits in the Cincinnati region?

21 A. No.

22 Q. Do they perform warranty audits  
23 anywhere?

24 A. No.

25 Q. What do they do for you?

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1 A. They provide technical assistance to the  
2 Ford and Lincoln Mercury dealers in the region.

3 Q. And what type of technical assistance do  
4 they provide?

5 A. They will assist the technicians and  
6 service management in diagnosing and repairing a product  
7 problem.

8 Q. How many days a week, on average, do  
9 these gentlemen spend in dealerships, actually assisting in  
10 repairs?

11 A. Five days a week.

12 Q. So the field reps, you expect them to be  
13 on the road most of the week?

14 A. Yes.

15 Q. How long have you been the Regional  
16 Manager of FCSD in Cincinnati?

17 A. Since May of 1998.

18 Q. And before that time, you mentioned you  
19 were regional manager in Dallas, is that correct?

20 A. That's correct.

21 Q. How long did you hold that position?

22 A. Three and a half years.

23 Q. And are your job duties as regional  
24 manager in Dallas the same or similar to the ones that you  
25 presently have in Cincinnati?

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1 A. Yes.

2 Q. What do you do as the Regional Manager  
3 of FCSD?

4 A. I supervise 30 employees whose roles are  
5 to support the dealers, to grow their parts and service  
6 business and enhance customer satisfaction.

7 Q. And your duties in Dallas were the same  
8 or similar?

9 A. Yes.

10 Q. What do you mean by growing the parts  
11 and service business?

12 A. Increasing traffic in the parts and  
13 service departments to generate revenue for the dealer.

14 Q. Did you recently discuss, during a  
15 dealer seminar, that the parts and service business of a  
16 dealership enhances the value, overall, of the dealership?

17 A. I don't recall.

18 Q. Do you think that's a correct statement?

19 A. Yes.

20 Q. From my understanding, a car needs parts  
21 and service when it's broken. How you grow the business if  
22 there's a finite number of broken cars out there?

23 A. Because you look for areas on a vehicle  
24 that will show wear and tear. And based on what you  
25 discover, you present that to the customer to inform them

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1 that they should replace this particular part. And that's  
2 typically maintenance-type repairs.

3 Q. Okay. So you assist the Lincoln Mercury  
4 dealers in identifying, from a proactive standpoint, where  
5 on the car, and then fixing it before it becomes a serious  
6 problem?

7 A. Yes.

8 Q. Okay. Does Lincoln Mercury do its own  
9 research to determine what parts of its cars are wearing or  
10 more likely to wear or need service?

11 A. Yes.

12 MS. MCNELLIE: Can I just make one  
13 suggestion?

14 MR. BERBERICH: Sure.

15 MS. MCNELLIE: Lincoln Mercury is  
16 Lincoln Mercury. FCSD is Ford and Lincoln Mercury. And  
17 just so you guys are talking the same language, it may make  
18 sense to not define it as Lincoln Mercury.

19 MR. BERBERICH: Right, okay, that's  
20 fair.

21 Q. Mr. Walls, when I talk about a Lincoln  
22 Mercury product, can we agree that it's actually a Ford  
23 product that's branded Lincoln or Mercury?

24 A. Yes.

25 Q. Okay.



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1 MS. MCNELLIE: But that was not really  
2 my issue. The issue is that Ford Customer Service Division  
3 is not just Lincoln Mercury. It is Ford Division and  
4 Lincoln Mercury Division interfaced. So to just say Lincoln  
5 Mercury is limiting what FCSD covers.

6 MR. BERBERICH: I understand that.

7 Q. Mr. Walls, does Ford Customer Service  
8 Division roll out programs to help its Lincoln Mercury  
9 dealers use mechanical or electrical diagnostic equipment to  
10 evaluate cars?

11 A. Yes.

12 Q. What types of mechanical or electronic  
13 diagnostic equipment does Ford market to its Lincoln Mercury  
14 dealers?

15 A. Well, service bay diagnostic systems to  
16 star testers, new generation system testers.

17 Q. Can you think of any other types of  
18 mechanical or electronic systems that are sold by Ford to  
19 the Lincoln Mercury dealers?

20 A. Front end alignment machines.

21 Q. Does the service bay diagnostic machine  
22 have a name, or a series of names?

23 A. Well, they call it an SBDS, for service  
24 bay diagnostic system, an acronym for that.

25 Q. When was the SBDS program rolled out?

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1 A. Oh, probably 1990.

2 Q. Is the SBDS machine a very sophisticated  
3 machine or is it pretty rudimentary?

4 A. It's sophisticated. It's a computer.

5 Q. And what is the star machine that you  
6 mentioned?

7 A. It tests engine operation.

8 Q. Does it perform a test on the computer  
9 that's in the car?

10 A. Yes.

11 Q. Okay. And is the star machine different  
12 from the SBDS machine?

13 A. Yes.

14 Q. Can a Lincoln Mercury dealer buy the  
15 SBDS machine from someone other than Lincoln Mercury?

16 A. No.

17 Q. Can the star machine be purchased from  
18 anyone other than Lincoln Mercury?

19 A. No.

20 Q. What is new gen?

21 A. That's new generation, and that's a star  
22 tester as well, just a new generation.

23 Q. What does the new gen do that the old  
24 star doesn't?

25 A. It's applicable to later engines.

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1 Q. Is a Lincoln Mercury dealer supposed to  
2 use these systems, like SBDS or star or new gen, when a  
3 vehicle is brought in for service?

4 A. Yes.

5 Q. And by use them, does every car that  
6 comes in for service get hooked up to these machines to do a  
7 complete run of systems?

8 A. It depends on what the reason is that  
9 the car is coming in, whether or not you're going to use a  
10 particular tester on it.

11 Q. Does growing the parts and service  
12 business involve you advising or training dealership  
13 personnel in how to encourage the customer to have the car  
14 looked at from a top to bottom standpoint by these machines?

15 A. Not by those machines in particular,  
16 but, you know, bringing customers in to check their vehicles  
17 out through different surveys or report cards, if you will,  
18 to check the different components, to let the customers know  
19 whether or not your components are in good shape, or if you  
20 see an issue that you can, you know, show the customer where  
21 it might be prudent to be replace the particular component.

22 Q. Can the SBDS machine spot a component  
23 wearing before it actually fails?

24 A. No, it doesn't pertain to wearing. It  
25 pertains to, you know, an operation. You can't tell whether

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1 it's wearing or not. It should be doing certain things, and  
2 if it's doing what it's supposed to do, then it's okay. But  
3 if it isn't, then it warrants maybe taking a look at.

4 Q. So an SBDS machine basically does a  
5 pass/fail on the systems that it measures?

6 A. Basically.

7 Q. Does the star on the new gen machine  
8 spot wear, or spot any failure before it becomes a total  
9 failure or a catastrophic failure?

10 A. Possibly.

11 Q. Can you think of any instances where the  
12 star or the new gen machine would be able to spot wear or  
13 spot a failure before it becomes total?

14 A. No. Typically what it will spot will be  
15 the engine, in terms of its operation. And for example, the  
16 engine is running rough and you test it to determine what it  
17 could be. Maybe the EGR valve or something needs to be  
18 replaced.

19 Q. If I, for instance, had a 1998 Lincoln  
20 Town Car, and I took it to Eastside Lincoln Mercury, would  
21 you encourage Eastside Lincoln Mercury to advise me, as the  
22 customer, to hook my car up to the new gen machine to make  
23 sure that all my systems were running correctly?

24 A. No, I wouldn't.

25 Q. Okay. How do you help your Lincoln

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1 Mercury dealers sell more parts and service?

2 A. Well, we design some marketing programs  
3 to help the dealer have a retail presence in the  
4 marketplace, as far as selling parts and providing service.

5 Q. Would you describe for me what these  
6 programs are?

7 A. Yeah. The major program is quality care  
8 maintenance, which we refer to as QCM, and that provides  
9 report cards with which the technicians or service advisors  
10 can look at the different components on the vehicle for  
11 potential opportunities to sell a part or provide, you know,  
12 measure, you know, brakes or tire tread depth to determine  
13 whether there's a need for tires, that type of thing.

14 Q. How would my car get a report card under  
15 the quality care maintenance program?

16 A. Well, under the program, we ask the  
17 dealers to use a report card on every vehicle that comes in  
18 for retail service.

19 Q. Now, you used the term "retail service,"  
20 what does that mean?

21 A. Customer paid service.

22 Q. Okay. And the other type of service is  
23 warranty service, correct?

24 A. That's correct.

25 Q. Do you encourage the dealerships to use

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1 a report card for warranty service?

2 A. No.

3 Q. Why would you not encourage the dealers  
4 to use a report card for warranty service?

5 A. Because the dealer, from a service, or  
6 from a warranty perspective, is to respond to the issue that  
7 the customer brought the vehicle in for for warranty  
8 coverage.

9 Q. Well, is the report card a good thing to  
10 provide the retail customer?

11 A. Yes.

12 Q. Okay. And what does the report card  
13 talk about, or what does it show?

14 A. Well, the report card will lead the  
15 technician or service advisor to look at components for  
16 wear, to measure tread depth, to look at the dirt in an air  
17 filter, if you will, those types of things, so that you can  
18 show the customer needing to replace that particular  
19 component.

20 Q. Why wouldn't that same level of analysis  
21 be important to a customer who has a vehicle under warranty?

22 A. Because the warranty is to respond to  
23 any defects in material or workmanship in the, you know, the  
24 production of the vehicle, and that's what warranty is for.

25 Q. If a dealer spots a defect in material

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1 or workmanship on a vehicle that's under warranty, but it's  
2 something that the customer did not complain of, is the  
3 dealer allowed to repair that under the warranty program?

4 A. The dealer is allowed to repair that if  
5 they follow a process that's required in order to repair  
6 that.

7 Q. And what is that process?

8 A. The process, essentially, is to contact  
9 the customer to let the customer know you've discovered  
10 something that needs to be done, and also to have the  
11 service management at the dealership, you know, sign off  
12 that an additional repair is being done, versus what the  
13 customer brought it in for.

14 Q. Do you know if Eastside Lincoln Mercury  
15 has ever been penalized, under a warranty audit or any other  
16 type of warranty action, for making a repair to a part of  
17 the car that was defective in material or workmanship under  
18 the warranty program, though it was not the presenting  
19 problem that the customer brought the car in for?

20 A. Yeah, I'm aware that, as a result of  
21 some audits that were conducted at Eastside, that there was  
22 a category of add-on repairs, repairs that were added on  
23 after the customer had brought the vehicle in, and did not  
24 indicate that these were issues when the vehicle was written  
25 up. I understand that that was a category.

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1 Q. And you describe add-on repairs almost  
2 as if it were a bad thing. Is that a bad thing, under a  
3 warranty, to --

4 A. No, I just described it for what it is.  
5 That's not, you know, good or bad. I mean, it's something  
6 that wasn't brought in by the customer.

7 Q. Why is it described as an add-on repair,  
8 versus a needed or necessary repair?

9 A. Because it wasn't included in the  
10 initial write-up of the vehicle when the customer brought it  
11 in.

12 Q. Should the add-on repair be paid under  
13 the warranty program if, in fact, the item was defective in  
14 material or workmanship?

15 A. If the repair is duly noted, you know,  
16 by contacting of the customer, also by service management in  
17 the dealership, and if it's a safety-related issue, yeah,  
18 you know, under those circumstances it should be.

19 Q. What if it's not a safety-related issue,  
20 yet it's still defective?

21 A. Well, it has to be, it then has to be,  
22 you know, authorized and documented, as far as service  
23 management is concerned and the customer is concerned.

24 Q. And what kind of documentation would the  
25 dealership have to do with Ford in order to get paid for



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1 that warranty work, and I'm talking about add-on work?

2 A. Yeah. The service, you know, manager  
3 needs to sign off on that particular repair and have that,  
4 you know, in writing, on the repair order, hard copy.

5 Q. Under a traditional warranty repair,  
6 does the service manager have to sign off? And by  
7 traditional I mean where the customer complained of the  
8 problem.

9 A. No, not unless they, you know, are the  
10 ones that are signing the repair order.

11 Q. So you're saying, for an add-on repair,  
12 that Ford is not necessarily taking the position that that's  
13 a bad thing, you're just saying that it requires the service  
14 manager to review and sign off on the repair before it's  
15 submitted as a warranty claim; is that correct?

16 A. Yes. And I might add, with the  
17 appropriate documentation that's required.

18 Q. And what do you mean by appropriate  
19 documentation?

20 A. Well, the time to do it and, you know,  
21 those types of things, you know, that's required to make  
22 sure that that is included on the repair order, the time  
23 punched on, punched off, and all those types of things, to  
24 actually, you know, show that a technician did spend time  
25 doing that repair.

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1 Q. Do you describe add-on warranty repairs  
2 as selling warranty work or selling warranty repairs?

3 A. No.

4 Q. Okay. What is selling warranty repairs?

5 A. I don't know what it is.

6 Q. If, for instance, Eastside Lincoln  
7 Mercury were to take a Mercury or a Lincoln in in trade and  
8 perform a diagnostic check using one of the Lincoln Mercury  
9 approved machines, like new gen or the SB --

10 A. SBDS.

11 Q. -- SBDS, and there were, let's say, 15  
12 items noted to be defective, and that vehicle was under  
13 warranty, would Eastside Lincoln Mercury be allowed to claim  
14 those as warranty repairs?

15 A. Could you repeat that, just to clarify  
16 it?

17 Q. Sure.

18 If Eastside Lincoln Mercury took a  
19 vehicle in trade, it was a Lincoln or Mercury vehicle, and  
20 that vehicle was still under warranty, and the dealership  
21 then placed that vehicle on the SB --

22 A. SBDS machine.

23 Q. -- SBDS machine or the new gen machine,  
24 and there were 15 items that were noted to be defective,  
25 would Eastside Lincoln Mercury be able to claim those

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1 repairs as warranty repairs?

2 A. I would say no, they would not be able  
3 to claim those as warranty repairs.

4 Q. Why would Eastside not be able to claim  
5 those repairs as warranty repairs, if, in fact, it was  
6 something that was defective in material or workmanship  
7 while still under the warranty period?

8 A. I would suggest that they have someone  
9 from, you know, Ford to verify that finding, if they were  
10 doing that.

11 Q. If these warranty repairs were being  
12 made on vehicles which were taken in trade and they were not  
13 warranted, meaning they were not defective in material and  
14 workmanship, would you consider that to be fraud?

15 A. Yes.

16 Q. In the case of Eastside Lincoln Mercury,  
17 did you ever find an instance of fraud, in terms of the  
18 warranty repair process, in any of the audits?

19 A. No.

20 Q. Is there a specific disallowance in the  
21 Ford warranty program for a dealership repairing a turned in  
22 used car which is still under warranty?

23 A. No, I do not believe so.

24 Q. Okay. Do you know whether or not  
25 Eastside Lincoln Mercury has ever been criticized by FCSD

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1 for performing warranty repair work on vehicles which were  
2 used car trade-ins or used car purchases?

3 A. Not to my knowledge.

4 Q. And you're saying that the only thing  
5 that Eastside Lincoln Mercury would have to do to have those  
6 claims processed and paid is to have someone from Ford  
7 verify that they were, in fact, necessary, correct?

8 A. Yes.

9 Q. Has there been a big push recently by  
10 Lincoln Mercury on the certified used car, certified  
11 pre-owned used car?

12 A. Yes.

13 Q. Does the certified pre-owned used car  
14 program refer to the fact that the vehicle has been checked  
15 in numerous ways, from a performance standpoint and an  
16 engine function standpoint, transmission standpoint, to make  
17 sure that it is in good shape?

18 A. Yes.

19 Q. You want to represent, through that  
20 program, that the certified pre-owned vehicle is "as good as  
21 new," even though it's a used car?

22 A. Yes.

23 Q. Have you ever given a directive, through  
24 FCSD, that a machine like the SBDS machine or the new gen  
25 machine be turned off after one problem is found, so that

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1 the machine doesn't record any other problems?

2 A. No.

3 Q. Would you consider that to be bad  
4 practice for a service technician to turn off a machine  
5 after one problem was found, versus letting it cycle through  
6 the entire diagnostic series?

7 A. I really am not in a position to answer  
8 that from the technical standpoint, because that's not my  
9 expertise.

10 Q. But how about from a FCSD standpoint,  
11 when a technician runs a diagnostic on a machine, you expect  
12 them to run that diagnostic fully, correct?

13 A. I do not know that, because that is a,  
14 you know, a technical process. And we have a lot of  
15 technical bulletins that we provide the dealer to tell them  
16 how to conduct these tests, and it either says, you know,  
17 keep going through an entire process or find your first code  
18 and then you stop and fix it. So it depends on what we  
19 instruct the dealer to do with regard to that particular  
20 test.

21 Q. Do you think it's fair to the consumer  
22 for the service technician to stop a diagnostic procedure  
23 before the full system check is done?

24 A. If that's what, if that's what we direct  
25 the technician to do in order to run the test.

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1 Q. I guess my question is: Do you think  
2 it's fair to the consumer to stop a diagnostic machine  
3 before it's done its full cycle, or full battery of tests?

4 A. And I would say yes, if that is the  
5 instruction that we have given the technician to identify a  
6 problem and then fix it.

7 Q. Have you ever read a Ford technical  
8 service bulletin where the technicians were advised to stop  
9 a diagnostic machine from performing a full cycle when a  
10 single problem is identified?

11 A. No.

12 Q. Did anyone under your supervision, or  
13 yourself for that matter, ever tell any of the Cincinnati  
14 region Lincoln Mercury dealers to stop a machine before it  
15 performed its full diagnostic run?

16 A. Not to my knowledge.

17 Q. Mr. Walls, will you agree with me that  
18 most of the repair work that's performed by the Lincoln  
19 Mercury dealerships in Cincinnati fall under the warranty  
20 repair category? And by most I'm talking about greater than  
21 50 percent.

22 A. I would say that it, to the best of my  
23 knowledge, it's probably just over 50 percent.

24 Q. Is part of that reason the fact that car  
25 warranties are getting longer, from the marketing or sales

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1 standpoint?

2 A. That's part of it.

3 Q. When you started in the business, what  
4 was the typical Ford warranty; was it the old 12 months,  
5 12,000 miles?

6 A. Yes.

7 Q. And now, for Lincoln Mercury products  
8 for instance, it's four years, 50,000 miles; is that  
9 correct?

10 A. Right.

11 Q. Does Lincoln Mercury, and I'll say  
12 through the FCSD division, ever perform testing on what the  
13 expected useful life of a Lincoln Mercury product is?

14 A. Not at the local level.

15 Q. Have you ever read any research data  
16 that Ford has done to determine what the expected useful  
17 life of a Lincoln or Mercury product is?

18 A. No, I haven't.

19 Q. In the last three years, what has the  
20 warranty repair trend been for Lincoln Mercury products?

21 A. The last three years we have seen, let's  
22 put it this way: In 2000 and 2001, we saw increases. In  
23 2002, it's been a marked decrease.

24 Q. How about from 1999 to the year 2000,  
25 was there an increase or a decrease?

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1 A. I'm not absolutely sure what the number  
2 is, but if I could venture an opinion, I would think that it  
3 was probably an increase.

4 Q. And to be simple about it, from, let's  
5 say, 1999 through 2001, was Lincoln Mercury experiencing a  
6 quality problem, or a product quality issue, compared to  
7 previous years?

8 A. Yes. And can I qualify this answer --

9 Q. Sure, sure.

10 A. -- by saying we had quite a few recalls,  
11 for all Ford Motor Company products. I can't be specific in  
12 terms of Lincoln Mercury or Ford, but, overall, we had a lot  
13 of recalls, and that, in fact, has had an impact on warranty  
14 at the dealerships.

15 Q. And is it fair to say that, let's say  
16 through the early '90s, that Lincoln Mercury had a very good  
17 reputation for product quality?

18 A. Yes.

19 Q. In fact, it was, even among the Ford  
20 brands, a leader in terms of initial product quality?

21 A. Yes.

22 Q. And then over the, I'll just say the '99  
23 through 2001 time frame, that product quality decreased  
24 because of some recalls and some other issues, correct?

25 A. Yes.



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1 Q. And 2002, your expecting a decrease for  
2 that year of, I'll just say warranty traffic; is that  
3 correct?

4 A. That's correct.

5 Q. Is the data for 2002 in?

6 A. Yes.

7 Q. And what was the comparison of 2001 to  
8 2002, in terms of, I'll just say overall warranty  
9 experience?

10 A. Okay. In the Cincinnati region, it's  
11 off 20 percent in dollars and 24.4 percent in traffic.

12 Q. And by being off, you're talking about  
13 comparing --

14 A. Year over year.

15 Q. Okay. Comparing that to the previous  
16 year?

17 A. Right.

18 Q. What was that experience like in 2000  
19 and 2001?

20 A. I don't have the figures like I do for  
21 2002, but I believe there was an increase.

22 Q. Was the increase in warranty traffic  
23 greater than 50 percent?

24 A. I would say no.

25 Q. Was it greater than 40 percent?

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1 A. I would say no.

2 Q. Can you give me an estimate on what the  
3 increase in the warranty traffic was during that 2000-2001  
4 time frame?

5 A. There was not an increase in the  
6 2001-2002 time frame. Did I misunderstand your question?

7 Q. No, 2000 and 2001.

8 A. 2000 and 2001?

9 Q. Correct.

10 A. I don't know. I can't venture a guess.

11 Q. What documents or reports would I look  
12 to in order to determine what the warranty claims experience  
13 was for Lincoln Mercury nationally in the 1999 through 2001  
14 time frame?

15 A. You would want this for the Lincoln  
16 Mercury division, is that what you're referring to when you  
17 say for Lincoln Mercury, for the division?

18 Q. Correct?

19 A. We have a report that would have this  
20 information. I mean, internally, we break it down.

21 Q. What's the report called?

22 A. MRS report.

23 Q. And what does MRS stand for?

24 A. Management reporting system.

25 Q. In any of the last three years, can you

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1 recall the traffic increasing for Lincoln Mercury repair  
2 work, and I'm talking about warranty work, greater than  
3 25 percent?

4 A. No.

5 Q. How about for warranty dollars, have  
6 you, during the last, I'll say three years or four years,  
7 seen an increase from one year to the next of warranty  
8 dollars of greater than 25 percent?

9 A. I can't recall.

10 Q. Have you ever undertaken any program to  
11 reduce the amount of warranty claims of the Cincinnati  
12 region Lincoln Mercury dealers?

13 A. No.

14 Q. How about the overall Ford dealerships?  
15 And that would include Lincoln Mercury, Ford, and everything  
16 else.

17 A. No.

18 Q. So, from your standpoint, you don't care  
19 how many warranty claims the dealerships are submitting, so  
20 long as they use the right paperwork; is that correct?

21 A. I do care about what's being submitted  
22 by dealers in terms of warranty, but the warranty basically  
23 stands on its own. If a customer has a problem, you bring  
24 it in and you repair it. And whatever that number turns out  
25 to be, that is what the number is.

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1 Q. So you don't place a value judgement on  
2 one dealer submitting a lot of warranty claims, as long as  
3 they do it correctly?

4 A. Correct.

5 Q. What did you do as accessories business  
6 manager in Detroit?

7 A. In that position, I was responsible for  
8 the design and production of Ford authorized accessories for  
9 all of our vehicles.

10 Q. Are you talking about floor mats, or  
11 what kind of things?

12 A. Floor mats were included in the product  
13 line, you know, bumper guards, running boards, ski racks.  
14 Those are what we talk about when we speak about  
15 accessories.

16 Q. And that job had nothing to do with your  
17 current tasks as FCSD regional manager; is that correct?

18 A. No, it didn't.

19 Q. And district manager in Buffalo, New  
20 York and Indianapolis, Indiana, what did those positions  
21 involve?

22 A. Essentially the same responsibilities  
23 that I have now, we just, at that time, called the markets  
24 districts, as opposed to regions.

25 Q. And how many years were you in those

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1 positions in Buffalo and Indianapolis?

2 A. I was in Indianapolis for three years,  
3 and I was in Buffalo for two years.

4 Q. So in the position that you're in  
5 presently, you've got roughly 13 years experience at that  
6 level?

7 A. Yes.

8 Q. And what did you do as service ops  
9 manager?

10 A. I was responsible for the field service  
11 engineers, for the parts, or I'm sorry, for the service zone  
12 managers, and owner relations operations for the New York  
13 district at that time.

14 Q. How long were you in that position?

15 A. Let's see, from, let's say '85 to '87,  
16 so two years.

17 Q. And parts sales manager, what did you do  
18 in that job?

19 A. I was responsible for parts sales for  
20 the New York district parts zone managers and dealer  
21 channel, as well as independent channel, which is our  
22 aftermarket product line, Motorcraft.

23 Q. And field services manager for New York,  
24 what did you do in that position?

25 A. As field service manager, I had

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1 responsibility for the zone managers, service zone managers.

2 Q. And operations manager in the northeast  
3 region, what did you do in that position?

4 A. I was responsible for coordinating the  
5 service responsibilities for seven districts that made up  
6 the northeast region.

7 Q. Have you ever performed a warranty audit  
8 of a dealership?

9 A. No.

10 Q. Have you ever performed any warranty  
11 review of a dealership?

12 A. Yes.

13 Q. When did you perform a warranty review  
14 of a dealership?

15 A. When I was a parts and service zone  
16 manager in the Newark district.

17 Q. And how many times did you perform a  
18 review?

19 A. On numerous occasions.

20 Q. What's the difference between a review  
21 and an audit?

22 A. A warranty review is a process of  
23 reviewing the practices of a dealership to administer the  
24 warranty claim process, and typically does not have a  
25 charge-back associated with it, but to provide the dealer

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1 with your observations and recommendations.

2 Q. Okay. And a warranty audit, how would  
3 you distinguish that from a review?

4 A. Warranty audits typically are conducted  
5 by auditors that are not part of the region or district at  
6 the time, if you will. And their process is similar to the  
7 review in that they will look at claims and they will make  
8 observations and recommendations, but they will also charge  
9 the dealer back.

10 Q. Did you have any involvement in  
11 establishing the present system of warranty audits and  
12 warranty counseling that Ford uses?

13 A. Not audits, but the counseling process,  
14 yes.

15 Q. Okay. Let me just step back for a  
16 second.

17 Is the audit process and the review  
18 process part of Ford's overall warranty counseling process?

19 A. Yes.

20 Q. Okay. And the first step, correct me if  
21 I'm wrong, is some form of self-review after a problem has  
22 been brought to a dealership's attention; is that correct?

23 A. Not totally.

24 Q. Okay. What's the first step? Why don't  
25 you give the steps to me?

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1 A. The first step is a self-review.

2 Q. Okay.

3 A. The self-review is initiated when a  
4 dealer's warranty performance has been high for a period of  
5 six periods in a particular area. There's three areas we  
6 look at: Cost per vehicle, service repairs per 1000  
7 vehicles serviced, and cost per repair. So if in any of  
8 those categories the dealership is tracking higher than the  
9 other dealers in their group, then they will be asked to do  
10 a self-review. And as a result of the self-review,  
11 hopefully they will identify some areas that may require  
12 some changes, from an administrative standpoint, put those  
13 changes in place, and, as a result, improve their  
14 performance so they come out of the warranty counseling  
15 system.

16 If they maintain that level of  
17 performance and don't decrease, then they are scheduled for  
18 a warranty review by a warranty specialist from our general  
19 warranty operations. That individual will come in and do a  
20 review of claims and make observations and recommendations.

21 Q. Do these general warranty operations  
22 specialists do nothing but that job?

23 A. Yes.

24 Q. Okay. These guys are traveling  
25 auditors, correct?



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1 A. Yes.

2 Q. Go ahead and continue.

3 A. There will not be a charge-back when a  
4 warranty review is conducted unless a fraud is uncovered.  
5 Then the recommendations are made to the dealer, and if they  
6 don't improve, a follow-up warranty review will be  
7 conducted, and the same parameters are in place. And if  
8 they still don't improve, then an audit is scheduled. And  
9 that's when an auditor comes in and they go through the  
10 process, and there are charge-backs identified with whatever  
11 is uncovered.

12 Q. Are there multiple levels of audits or  
13 is there just simply one type of audit?

14 A. Just one type.

15 Q. So from what you've just described,  
16 there are roughly four tiers: The first being self-review,  
17 the second being warranty review, the third being follow-up  
18 warranty review, and then the fourth being an audit; is that  
19 correct?

20 A. Yes. And then there's a follow-up  
21 audit, so that's actually a fifth step.

22 Q. Okay. Did you have any role in creating  
23 or developing the warranty counseling process at Ford?

24 A. Yes.

25 Q. What was your role?

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1                   A. I was the champion of the team that  
2 worked to come up with this process of providing a  
3 dealership an opportunity to fix whatever might be wrong on  
4 their own, and then to move gradually through a process, in  
5 hopes of improving their performance.

6                   Q. What do you mean champion?

7                   A. Well, there was a team of approximately  
8 five individuals with warranty auditing experience, and I  
9 was the champion, in terms of being the lead manager to  
10 facilitate the process.

11                  Q. And what did you facilitate?

12                  A. You know, their need to go through some  
13 type of orderly road map to get to our desired results to  
14 come up with this process.

15                  Q. Did you actually have meetings or  
16 conferences with other similarly placed people in the  
17 organization to draw up a written plan?

18                  A. Yes.

19                  Q. Okay. When did this happen?

20                  A. This was '95, '96, in that area, that  
21 time frame.

22                  Q. Before 1996, did Ford have a formalized  
23 warranty counseling program?

24                  A. No, it wasn't called a warranty  
25 counseling program, but there was a, you know, a process of

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1 doing warranty reviews and audits, that type of thing, but  
2 not to the extent where we had, you know, had an opportunity  
3 for the dealer to do an in-dealership review and that type  
4 of thing, as we see it today.

5 Q. Now, the program that you've just  
6 described, the warranty counseling program, is that driven  
7 by the findings on the 126 report?

8 A. Yes.

9 Q. What is the 126 report called?

10 A. Warranty Trend Analysis Report.

11 MS. MCNELLIE: Can we take five minutes  
12 before we go into the 126, what that is?

13 MR. BERBERICH: Sure.

14 (THEREUPON, A SHORT RECESS WAS TAKEN).

15 Q. The 126 warranty trend report, what is  
16 that report designed to reveal, what is the purpose of that  
17 report?

18 A. The purpose of it is to highlight any  
19 areas in the warranty expense process that shows where a  
20 dealer might be out of line with the group that he's a part  
21 of. So it's like a red flag report, if you will.

22 Q. Are there certain codes that are shown  
23 on the 126 report?

24 A. Yes.

25 Q. And what do those codes do, or what is

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1 the purpose of the codes?

2 A. Well, the codes identify areas of repair  
3 that are out of line with the other dealers in the region.

4 Q. Does a dealer throwing a code on a 126  
5 report show whether or not the dealer is committing fraud?

6 A. No.

7 Q. Does a code on an 126 report show  
8 whether or not a dealer is performing warranty repair work  
9 that's unwarranted or unnecessary?

10 A. No.

11 Q. Is it fair to say that the 126 report is  
12 simply an indicator, or a, I think you used the word a  
13 flag, --

14 A. Uh-huh.

15 Q. -- that further investigation is  
16 necessary?

17 A. Yes.

18 Q. And that investigation is to determine  
19 why this dealer is out of line compared to the other dealers  
20 in his region; is that correct?

21 A. Yes.

22 Q. What happens if, after a warranty review  
23 or audit is performed, it's concluded that the warranty work  
24 that was done by the dealership was necessary?

25 A. Nothing.

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1 Q. Well, for instance, if someone throws  
2 codes on the 126 report, and those codes are later  
3 investigated through an audit, --

4 A. Uh-huh.

5 Q. -- and it's determined that the  
6 dealership did not commit a fraud, would that be significant  
7 to you?

8 A. No.

9 Q. If after a warranty audit is performed  
10 and it's concluded that there are minor administrative  
11 deficiencies in terms of the warranty reporting, would that  
12 be significant to you?

13 A. Yes.

14 Q. Okay. And how is that significant to  
15 you?

16 A. Because it's not in keeping with the  
17 policy and procedure that's outlined in the warranty policy  
18 manual, which is a supplement to the sales and service  
19 agreement that the dealer has agreed to follow.

20 Q. Okay. Where did you develop the  
21 understanding that the warranty manual is part of the sales  
22 and service agreement?

23 A. It's in the warranty policy manual.

24 Q. It says it right on the front, preamble;  
25 is that correct?

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1 A. Yeah.

2 Q. And does the warranty policy and  
3 procedure manual specifically say that if a dealer is out of  
4 variance with his peers that he's doing something wrong?

5 A. No.

6 Q. Have you ever done warranty audits of  
7 dealerships who are not showing codes, in order to determine  
8 what a baseline error rate would be?

9 A. No.

10 Q. Do you understand what I'm saying by  
11 that question?

12 A. I think I do.

13 Q. Okay. Like if you took 100 dealers who  
14 are not throwing codes on their 126 reports, and you did  
15 audits on those to determine what a typical error rate was  
16 for warranty repairs.

17 A. Uh-huh.

18 Q. Do you know if Ford has ever done  
19 anything like that?

20 A. No.

21 Q. Before you were sued by Eastside Lincoln  
22 Mercury, did you use their repair facility in order to  
23 repair your company car?

24 A. No.

25 Q. Had you ever used Eastside Lincoln

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1 Mercury as a service facility to repair your company car?

2 A. Yes.

3 Q. When did that happen?

4 A. Can't tell you specifically, but I can  
5 tell you when I've taken my wife's car in there for service  
6 it was to change the oil, and I took it in twice. And it  
7 was -- we moved here in '98, so it had to be in '99, I would  
8 say that was when I brought it in, '99 or 2000.

9 Q. What part of town do you live in?

10 A. Anderson Township.

11 Q. So this is, in fact, the nearest Lincoln  
12 Mercury dealership to your home?

13 A. Yes.

14 Q. Based on your experience with Eastside  
15 Lincoln Mercury, do you have an opinion as to the quality of  
16 the technicians that they employ?

17 A. Yes.

18 Q. And what is your opinion?

19 A. That they're good.

20 Q. And do you believe that Eastside Lincoln  
21 Mercury has the best service technicians in the city for  
22 Lincoln Mercury service and repair work?

23 A. I don't know. I can't make that  
24 determination, whether they have the best technicians in the  
25 city. I just have, you know, no wheelbase to make that

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1 decision.

2 Q. What type of parameters would you use to  
3 determine whether or not a dealership has the best mechanics  
4 of their particular brand?

5 A. One thing that I would look at is what  
6 certifications that they've achieved from Ford Motor  
7 Company, in terms of their skill.

8 Q. Do you keep track of the certification  
9 level of the repair facilities in your region?

10 A. Not within the region, but we do have  
11 technical service operations located in the Cincinnati area,  
12 they're out of Detroit, and they track the technician level  
13 of accomplishment and achievement of the dealer's  
14 technicians.

15 Q. Can you state, off the top of your head,  
16 whether or not Eastside Lincoln Mercury has the highest  
17 number of certified master technicians?

18 A. No, I can't.

19 Q. Do you know whether or not Eastside  
20 Lincoln Mercury has maintained the highest customer service  
21 index on its repair service over the time you've been in the  
22 Cincinnati region?

23 A. I can't say that they have the highest,  
24 but I know that they have been in the top dealerships in the  
25 market since I've been here.



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1 Q. Do you know whether or not they've been  
2 the highest in terms of customer satisfaction index for  
3 repair work of Lincoln Mercury dealers?

4 A. I don't know whether they've been the  
5 highest, but again, they have been up there, ranked near the  
6 top, but I just can't say whether or not they were number  
7 one or not.

8 Q. Have you ever heard the term "business  
9 plan" used?

10 A. Sure.

11 Q. Okay. Does FCSD have its own business  
12 plan that's unveiled at the beginning of each year?

13 A. Yes.

14 Q. And is that business plan shared with  
15 the Lincoln Mercury Division?

16 A. Yes.

17 Q. What does that business plan look like?

18 A. Essentially, it defines what our  
19 objectives are going to be for the year, it defines how we  
20 plan to achieve those objectives, and we break it down by  
21 market.

22 Q. During your time in Cincinnati, have you  
23 ever attended a business plan meeting for the Lincoln  
24 Mercury Division?

25 A. No.

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1 Q. Does anyone from the Lincoln Mercury  
2 Division attend your business plan meetings?

3 A. Yes.

4 Q. Who, from the Lincoln Mercury Division,  
5 has attended your business plan meetings?

6 A. Matt Wilson.

7 Q. What's Matt's role?

8 A. He's a GZM, general zone manager.

9 Q. And has Jerry Carter ever attended any  
10 of your business plan meetings?

11 A. Yes, yes.

12 Q. Can you recall on how many occasions?

13 A. Just once.

14 Q. Do you recall the specific reason why he  
15 attended it?

16 A. This probably was back in, it would be  
17 '99. He gave an overview of his business plan to my people.

18 Q. In your business planning sessions, do  
19 you discuss upcoming warranty counseling actions to be taken  
20 against your dealers?

21 A. No.

22 Q. Have you ever heard the term "market  
23 consolidation" used with regard to Ford or Lincoln Mercury  
24 products?

25 A. Yes.

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1 Q. What does the term "market  
2 consolidation" mean in your understanding?

3 A. Market consolidation means to reduce the  
4 number of dealers in a given market area to provide  
5 distribution to the population in that area.

6 Q. Was it explained to you by anyone at  
7 Ford, the purposes behind market consolidation, or why that  
8 would be a good thing?

9 A. No.

10 Q. Okay. Were you involved in any  
11 discussions regarding market consolidation of the Cincinnati  
12 market?

13 A. No.

14 Q. Did you ever have any discussions with  
15 Jerry Carter regarding Cincinnati's market consolidation?

16 A. Yes.

17 Q. What discussions did you have with  
18 Mr. Carter?

19 A. Just an informal discussion in terms of  
20 what market consolidation meant from their perspective.

21 Q. Can you tell me when this discussion  
22 happened?

23 A. No, not specifically.

24 Q. Did the discussion happen more than  
25 once?

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1 A. I'd say no.

2 Q. So you can recall talking with Jerry  
3 Carter one time about market consolidation and what that  
4 meant from Lincoln Mercury's standpoint?

5 A. Right.

6 Q. Can you tell me anything else that you  
7 remember about that conversation?

8 A. Not anything specifically.

9 Q. Where did the conversation happen?

10 A. In our offices.

11 Q. In whose office?

12 A. My office. I'm not sure. It could have  
13 been his office. As I indicated, this was informal, this  
14 was not any planned meeting to discuss consolidation.

15 Q. Did your discussion with Mr. Carter  
16 happen before any steps had been taken to consolidate the  
17 Cincinnati market?

18 A. I would say yes.

19 Q. Did you express any opinion to  
20 Mr. Carter about the merits of consolidating the Cincinnati  
21 market?

22 A. No.

23 Q. Did Mr. Carter explain to you how he  
24 believed that market consolidation would be accomplished?

25 A. No.

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1 Q. But you understood, generally, that the  
2 term meant that you would reduce the number of dealers in  
3 the area; is that correct?

4 A. Yes, yes.

5 Q. And was the topic of Eastside Lincoln  
6 Mercury raised during those discussions of consolidation?

7 A. Not specifically.

8 Q. How was Eastside Lincoln Mercury  
9 discussed, generally?

10 A. Just as one of the dealers in the  
11 market.

12 Q. Did Mr. Carter explain to you that  
13 Eastside Lincoln Mercury was one of the dealers that they  
14 had intended to eliminate or reduce?

15 A. No.

16 Q. Did Mr. Carter explain to you that there  
17 was a dealer that he had in mind to be the consolidator,  
18 meaning the one that would remain?

19 A. No.

20 MS. MCNELLIE: Object to the form.

21 Q. Did Mr. Carter, in any way, describe to  
22 you Mr. Riechert's role in the Cincinnati market  
23 consolidation?

24 A. No.

25 Q. Now, you mentioned that Eastside Lincoln

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1 Mercury was discussed generally. How did the discussion  
2 impact Eastside, and what was stated about Eastside?

3 A. Nothing was stated about Eastside in  
4 particular.

5 Q. Okay. What was stated about Eastside  
6 generally?

7 A. The fact, I mean, that Eastside is one  
8 of the Lincoln Mercury dealers on the south side of the  
9 city.

10 Q. How did Eastside Lincoln Mercury's name  
11 come up in the context of consolidation?

12 A. Only that it's one of the Lincoln  
13 Mercury dealers in the city.

14 Q. Did Mr. Carter ask your opinion, as the  
15 parts and service director of the area, as to which Lincoln  
16 Mercury dealer had the best parts and service organization?

17 A. No.

18 Q. Do you think that in determining what  
19 dealership to consolidate to, or what dealerships to get rid  
20 of, that a dealership's parts and service performance is  
21 relevant?

22 A. I believe that a dealer's parts and  
23 service performance is relative, but from the perspective of  
24 whether to get rid of them or not, I can't say. That's not  
25 an area that I would make any kinds of decisions. I mean,

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1 if somebody asks me what the parts and service performance  
2 is, I can respond to that. But as far as them, you know,  
3 their operational or existence and that kind of thing, I  
4 don't have any role to play there.

5 Q. Well, if Mr. Carter approached you when  
6 discussing consolidating the Cincinnati market, who would  
7 you have described to him had the best parts and service  
8 operation of the Lincoln Mercury dealers?

9 MS. MCNELLIE: Are you assuming that  
10 question got asked?

11 MR. BERBERICH: No, no, no.

12 Q. I'm saying had Mr. Carter approached you  
13 and asked you who had the best parts and service operation  
14 in the Cincinnati market, what would you have said, how  
15 would you have responded?

16 A. I would have responded that I can't tell  
17 you who has the best. That we'd have to, you know, look at  
18 a whole bunch of different parameters, in terms of saying  
19 who's best or who isn't best. Every, you know, every dealer  
20 has, you know, positives and every dealer has negatives, but  
21 I certainly haven't force ranked them in terms of the best  
22 to worst.

23 Q. Now before the Cincinnati market  
24 consolidation was attempted, do you know if anybody tried to  
25 evaluate the Lincoln Mercury dealers from best to worst in

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1 terms of parts and service?

2 A. No.

3 Q. Did Mr. Carter ever indicate to you that  
4 Bob Riechert was intended to be the market consolidator for  
5 Cincinnati?

6 A. No.

7 Q. Did you ever learn that Mr. Riechert was  
8 intended to be the market consolidator for the Cincinnati  
9 market?

10 A. No.

11 Q. Did you ever hear the use of the term  
12 "consolidator agreement?"

13 A. No.

14 Q. Other than as part of the warranty  
15 counseling process, have you ever had any conversations with  
16 Bill Woeste, George Beattie, Jim Woodall, or anyone that  
17 works for Mr. Woeste?

18 A. Other than the warranty and counseling  
19 process, yes, I have.

20 Q. What conversations or interactions did  
21 you have with Mr. Woeste or any of his employees?

22 A. Probably with George Beattie, who is the  
23 general manager, talking about business in general, how  
24 they're doing, some marketing initiatives that they were  
25 doing on their own that I thought were very interesting, and



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1 we would talk about those types of things.

2 Q. What marketing initiatives were you  
3 talking about?

4 A. Well, they had established a book  
5 (indicating), a coupon book of specials for their customers,  
6 that they mailed out. Coupons that the customer could use  
7 for various different maintenance services and rental cars  
8 and things like that, that they sent to their customers.  
9 And I thought that was a pretty neat idea, and I remember  
10 talking to George about that. When I was there on a  
11 Saturday morning with my wife's car, I'd chat with George  
12 about the business and the dealership.

13 Q. Did you have an occasion to be a  
14 presenter in front of a group that was attended by  
15 Mr. Woeste and Mr. Beattie, or any of the Eastside Lincoln  
16 Mercury personnel?

17 A. Yes.

18 Q. You do that on a regular basis?

19 A. Typically, twice a year I will make a  
20 presentation to the dealers, as a group, in the market, and  
21 whether it be all dealers, Ford and Lincoln Mercury, or, you  
22 know, if it's a Lincoln Mercury meeting, I might have a role  
23 in that.

24 Q. So that would be a twice-a-year state of  
25 the market address?

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1 A. Yes, exactly.

2 Q. At the time that you entered the  
3 Cincinnati market, what Lincoln Mercury dealers were  
4 present?

5 A. Eastside Lincoln Mercury, Kings Auto  
6 Mall, Dixon, Northgate, and the point in northern Kentucky,  
7 the Riverside, I believe the name of it was at the time.

8 Q. And Riverside is now Lincoln Mercury of  
9 Florence?

10 A. Florence, yes.

11 Q. And Northgate, what's that called now?

12 A. It's still called Northgate.

13 Q. Was there a Stillpass Lincoln Mercury?

14 A. Oh, yes, Stillpass. I forgot, sorry.

15 Q. And the Stillpass point has been closed,  
16 correct?

17 A. Yes.

18 Q. And Eastside is still Eastside, correct?

19 A. Correct.

20 Q. Kings is still Kings, correct?

21 A. Right.

22 Q. And Dixon is now Lincoln Mercury of  
23 Fairfield, correct?

24 A. I believe It's Fairfield Lincoln  
25 Mercury, but yeah.

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1 Q. Something along those lines?

2 A. Yeah.

3 Q. And Northgate is still Northgate,

4 correct?

5 A. Yes.

6 Q. Since you've been in the region, was the  
7 Stillpass dealership ever put on the self-review?

8 A. Not to my knowledge.

9 Q. Was the Stillpass dealership ever  
10 warranty counseled in any way?

11 A. Not to my knowledge.

12 Q. And by counseled, I'm talking about  
13 either a warranty review or an audit?

14 A. Not to my knowledge.

15 Q. Okay. Since you've been in the region,  
16 has Eastside Lincoln Mercury been the subject of a  
17 self-review?

18 A. Yes.

19 Q. Has --

20 A. No, I'm sorry.

21 Q. Okay.

22 A. Not since I've been here.

23 Q. Do you believe, before you arrived, that  
24 Eastside was subject to self-review?

25 A. I do believe they were.

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1 Q. Let me ask you a general question about  
2 the warranty counseling process: Is that process automatic  
3 or self-executing, based on the performance of the 126  
4 reports?

5 A. Yes.

6 Q. Is there a provision in the manual that  
7 governs that program, for warranty counseling to be  
8 initiated at the determination of regional management?

9 A. No.

10 Q. Is there any provision in the warranty  
11 counseling manual where any of the steps can be skipped?

12 A. No.

13 Q. Can a dealership be placed into the  
14 warranty counseling process, whether that's self-review,  
15 review or audit, at the discretion of FCSD management?

16 A. No.

17 Q. Can a Lincoln Mercury dealership be  
18 placed in the warranty consulting process, or warranty  
19 counseling process, at the request of the Lincoln Mercury  
20 retail division?

21 A. No.

22 Q. Can the Lincoln Mercury Division, I'll  
23 say countermand or eliminate the punishment, or the penalty,  
24 under the warranty counseling matrix that's levied by FCSD?

25 A. Can you be more specific when you use

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1 the term "punishment?"

2 Q. Well, okay. Let me just step back for a  
3 second.

4 As part of the warranty counseling  
5 process, if a dealer has been in that, I'll say process, for  
6 any period of time, is there a matrix which shows what will  
7 happen to that dealer based on the findings of an audit?

8 A. Yes.

9 Q. Are any of the items that are contained  
10 in the matrix good things for the dealer?

11 MS. MCNELLIE: Object to the form of the  
12 question.

13 You can answer.

14 A. Yes, in a sense, there are some good  
15 things.

16 Q. How are the items that are contained in  
17 the matrix good for the dealer?

18 A. Well, I think what those items suggest  
19 is that you're in, you know, because you're in the matrix,  
20 you haven't been able to improve your warranty, and these  
21 are some things that might help you get to the point where  
22 you've improved it, so you're no longer in the matrix.

23 Q. Are there penalties that are contained  
24 in the matrix?

25 A. Yes.

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1 Q. And the most severe penalty, if it's  
2 contained in the matrix, is termination, correct?

3 A. It's a recommendation. It's not -- it  
4 doesn't say "termination."

5 Q. Okay. So you're saying that FCSD can,  
6 at most, recommend termination, based on the results of a  
7 warranty audit; is that correct?

8 A. FCSD cannot recommend termination. A  
9 recommendation of termination can only be made by the  
10 vehicle division.

11 Q. Okay. Does the vehicle division  
12 determine in which sector of the matrix that a dealer falls  
13 after an audit?

14 A. No.

15 Q. Okay. Does FCSD, as part of the matrix,  
16 have the option of placing a Ford consultant, for six or  
17 eight weeks, at the tune of \$30,000, in a dealership?

18 A. Yes.

19 Q. And what if the dealership rejects that  
20 placement?

21 A. Well, the matrix then indicates that a  
22 recommended termination could result by the dealer not  
23 accepting a consultant in their dealership.

24 Q. If the dealership rejects any of the  
25 recommended fixes, or recommended, I call them penalties, in

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1 the matrix, is termination an option?

2 A. No.

3 Q. What are some things that are  
4 recommended in the matrix that would not lead to a  
5 termination if the dealer just rejected them?

6 A. There's a meeting with the regional  
7 manager from FCSD, or with the regional manager from the  
8 vehicle division. You know, if the dealer refused to sit  
9 down to a meeting, the next step is not to recommend  
10 termination, if the dealer refused to do that.

11 The dealer is asked to sign warranty  
12 claims as one of the areas of a matrix. And, you know, if a  
13 dealer refused to do that, we don't indicate that he then  
14 can be subject to termination. So there are other areas on  
15 that list of eight items, seven or eight items, that could  
16 pertain to that.

17 The one area is that if you refuse to  
18 have a consultant come in, and this is under the third  
19 matrix, that, you know, a recommendation of termination  
20 might be in order. And that's spelled out on the matrix  
21 that we, you know, have in the manual.

22 Q. So what does FCS do when the dealer  
23 turns down the in-dealer consultant?

24 A. FCSD, you know, defers to the vehicle  
25 division at that point, if the dealer turns it down, in

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1 terms of whether to proceed forward or not, and the decision  
2 at that point might determine where we go next.

3 Q. But is it fair to say that the  
4 recommendation issues automatically from FCSD if a dealer  
5 refuses to take the in-dealer consultant?

6 A. No, it's not automatic. It's not  
7 automatic.

8 Q. If the dealer refuses to sign the  
9 warranty, I guess repair claim forms, does that lead to an  
10 automatic recommendation of termination?

11 A. No.

12 Q. Have you verbally agreed to waive that  
13 requirement for Eastside Lincoln Mercury after past audits  
14 where that step was recommended?

15 A. No, I don't -- I can't remember. I  
16 don't think so.

17 Q. Do you recall a previous audit, I  
18 believe in '99, where it was recommended that Mr. Woeste  
19 sign the warranty claim forms, and someone from the  
20 dealership spoke with you and you agreed to waive that  
21 requirement?

22 A. I don't remember.

23 Q. Now, if the dealership is found to have  
24 committed fraud, is the termination recommendation made?

25 A. I'm not sure how that's spelled out in



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1 that document.

2 Q. Well, I'm just asking you based on your  
3 experience as the FCSD regional manager.

4 A. It's not automatic.

5 Q. Is fraud the worst thing you can find on  
6 an audit?

7 A. Yeah, I think so.

8 Q. Was fraud found on the audit of Jim  
9 Dixon?

10 A. I don't remember.

11 Q. During your tenure here as FCSD regional  
12 manager, can you tell me the number of dealers in which  
13 fraud was found to have occurred in either a warranty review  
14 or a warranty audit?

15 A. No, I can't.

16 Q. Okay. Has fraud been found more than  
17 once, to your recollection, in this region, during your  
18 tenure?

19 A. I can't remember.

20 Q. Has fraud been found more than five  
21 times in this region, in either a warranty review or a  
22 warranty audit, during your tenure as regional manager?

23 A. Don't know.

24 Q. Has fraud ever been found on a warranty  
25 audit or a warranty review during your term as regional

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1 manager? And I'm talking about here in Cincinnati.

2 MS. MCNELLIE: In Cincinnati?

3 MR. BERBERICH: In Cincinnati, yes.

4 Q. Now, I'm not talking about the  
5 Cincinnati market, I'm talking about the Cincinnati region.

6 A. Yes.

7 Q. Can you give me a rough estimate as to  
8 the number of times that fraud has been found?

9 A. No, I can't.

10 Q. Does it happen --

11 A. It's very minimal.

12 Q. Does it happen so frequently that you  
13 can't remember?

14 A. No.

15 Q. Is there any reason why you can't  
16 remember how many times fraud has been found on a review or  
17 an audit in this region, during your tenure?

18 A. No, I just can't recall any specific  
19 cases of fraud, you know, being uncovered.

20 Q. And you don't recall if fraud was found  
21 during one of the Jim Dixon reviews or audits; is that  
22 correct?

23 A. Yeah, I can't recall.

24 Q. Had fraud been uncovered, would you have  
25 recommended termination?

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1 A. I don't know. It depends on the  
2 circumstances.

3 Q. Do you know what the manual says about  
4 how bad fraud is?

5 A. No, I don't.

6 Q. Do you know whether or not the warranty  
7 policy manual states whether a first time occurrence of  
8 fraud could form the basis of a termination?

9 A. No, I'm not familiar with that.

10 Q. Did you have a disagreement with  
11 Mr. Woeste during any of the warranty audit meetings related  
12 to the 2001 audit?

13 A. No.

14 Q. Would you describe your communication  
15 with Mr. Woeste during any of the 2001 warranty audit  
16 meetings to be confrontational or, in any way, aggressive?

17 A. No.

18 Q. Would you consider your conversation  
19 with Mr. Woeste during the 2001 audit meetings to be cordial  
20 or polite?

21 A. No.

22 Q. How would you describe --

23 A. Businesslike.

24 Q. At how many meetings were you present  
25 related to the 2001 audit of Eastside Lincoln Mercury?

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1 A. Question: Meetings with who?

2 Q. With anybody, just related to the audit

3 itself.

4 A. Three.

5 Q. What were those meetings? Would you

6 describe them for me?

7 A. A meeting with the auditor.

8 Q. Who was the auditor?

9 A. Ernie Rouse.

10 A meeting with Jorge Castillejo, my  
11 office operations manager, and a meeting with Bill Woeste.

12 Q. Was the meeting with Mr. Woeste a

13 closing conference?

14 A. Yes.

15 Q. Did you attend the opening conference?

16 A. No.

17 Q. Did the meeting with auditor Rouse occur

18 before the audit was conducted?

19 A. No.

20 Q. At what point in the process did the

21 meeting with auditor Rouse occur?

22 A. Prior to the closing of the closing

23 meeting.

24 Q. And what was the purpose of that

25 meeting?

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1 A. To review his findings.

2 Q. And what did that review show?

3 A. What's outlined in the report that he  
4 provided to, you know, everybody present at the meeting.

5 Q. Can you tell me what, in general terms,  
6 those findings were?

7 A. There were areas of disallowance, there  
8 were recommendations, there was the amount of the  
9 charge-back.

10 Q. Can you give me an idea as to what the  
11 areas of disallowance were?

12 A. Not Ford responsibility, add-on repairs,  
13 and I can't remember specifically what the others were.

14 Q. Anything specific stand out in your mind  
15 about the not Ford responsibility?

16 A. No.

17 Q. How about the add-on repairs, anything  
18 specific stand out in your mind?

19 A. No.

20 Q. Did Mr. Woeste show up on time for the  
21 meeting?

22 A. Yeah, I believe he did.

23 Q. Did the meeting begin on time?

24 A. I believe it did.

25 Q. Was there a period where you sat in the

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1 meeting room with Mr. Woeste and just stared at him because  
2 it wasn't the exact precise meeting time?

3 A. No.

4 Q. So if Mr. Woeste testifies that you sat  
5 in the room and stared at him for a period longer than 15  
6 minutes because they showed up early, you would say he's not  
7 telling the truth?

8 A. I would say that that's not what I  
9 recall.

10 Q. Okay. And if he recalls a shouting  
11 match between you and he, then you would also disagree with  
12 him; is that correct?

13 A. Yes.

14 Q. Do you recall what the percentage of  
15 disallowance was on the 2001 audit?

16 A. I know that it was less than 2 percent,  
17 because that's where it fit in the matrix, in that block  
18 that says "less than 2 percent in total cost."

19 Q. And would you consider that to be a  
20 fairly modest amount, in terms of error?

21 A. Yeah, I think we designate that block as  
22 low cost.

23 Q. And the amount of the charge-back, how  
24 large was that?

25 A. Approximately \$5900.

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1 Q. And can you recall how many invoices  
2 were reviewed in order to come up with the \$5900 in  
3 disallowances?

4 A. I don't remember the number.

5 Q. Was it more than a hundred?

6 A. I believe so.

7 Q. Was it more than a thousand?

8 A. I don't think so.

9 Q. How many days did Mr. Rouse spend at  
10 Eastside Lincoln Mercury, auditing the warranty invoices?

11 A. I don't know how many days he was in  
12 there, but that's identified in his report that he filed.

13 Q. Do you think he spent more than 20 days  
14 at Eastside?

15 A. I don't think so.

16 Q. Do you think he spent more than 14?

17 A. No, I don't think so.

18 Q. Do you think the cost associated with  
19 performing the audit at Eastside Lincoln Mercury exceeded  
20 the amount of disallowances that were found?

21 A. I don't know. I don't have privy to the  
22 cost associated with conducting an audit.

23 Q. Mr. Rouse is an out-of-towner; is that  
24 correct?

25 A. Yes, he is.

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1 Q. Was he put up at Ford's expense when he  
2 was in town?

3 A. Yes.

4 Q. Do you consider it a significant issue  
5 when one of your dealer franchisees is being warranty  
6 audited?

7 A. Yes.

8 Q. Does it happen all the time or does it  
9 happen fairly infrequently during the year?

10 A. Clarification: Are you speaking of in  
11 total, all the dealers? I have 143 dealers. How frequently  
12 they're audited?

13 Q. Yes. If you've got 144 dealers, or 143  
14 dealers, how often during the year do you have warranty  
15 audits conducted on those dealers?

16 A. It's minimal.

17 Q. Under five?

18 A. Yeah.

19 Q. So you would consider a warranty audit  
20 to be fairly important to you, as the regional manager of  
21 FCSD?

22 A. Yes.

23 Q. Does keeping your dealer franchisee body  
24 off the list, in terms of the warranty consulting process or  
25 the warranty counseling process, is that an issue for you,



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1 as the regional manager?

2 A. It's not what I would define as an  
3 issue. It is important to me. My preference would be that  
4 I didn't have dealers on that audit program.

5 Q. Are there any people that are under your  
6 direct supervision that are tasked with assisting dealers  
7 who are in the warranty counseling process to get out of  
8 that process?

9 A. Yes.

10 Q. Who is tasked with that job?

11 A. The market area team that's responsible  
12 for calling on that dealer, and specifically the customer  
13 service manager, as well as the dealer operations manager.

14 Q. And who would those people have been  
15 with regard to Eastside Lincoln Mercury?

16 A. The dealer operations manager, this is  
17 in 2000-2001, Monica Rivers, and Judy McLaughlin, who was  
18 the customer service manager.

19 Q. And so these two people would have had  
20 the goal or the objective of helping Eastside Lincoln  
21 Mercury get out of the warranty counseling process; is that  
22 correct?

23 A. They would have the goal to assist the  
24 dealer to get out of the warranty counseling process.

25 Q. So, during the five years, roughly, that

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1 you've been in the Cincinnati region, --

2 A. Uh-huh.

3 Q. -- if you had a dealer that was showing  
4 up in the warranty counseling process each year, would you  
5 target that dealer for some type of remedial help, or some  
6 type of tutoring, in order get out of the warranty  
7 counseling process?

8 A. That would be an area that the market  
9 area team would have on their radar screen, if you will, for  
10 the dealer. But, you know, there's not a target identified,  
11 or an objective identified in that regard. It's almost like  
12 a constant relationship of talking about warranty  
13 performance. The 126 comes out every month, you talk about  
14 where you are (indicating), in terms of your performance,  
15 and talk about areas of improvement.

16 Q. Do you know when the 126 report was  
17 first shared with Eastside Lincoln Mercury?

18 A. It's sent to dealers on a monthly basis.

19 Q. So the report itself is actually mailed  
20 or somehow --

21 A. Yeah, it was mailed, and then  
22 electronically mailed when we got the upgraded technology,  
23 or technologically speaking.

24 Q. And do you have evidence that Eastside  
25 Lincoln Mercury would have received the 126 report every

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1 month for the last five years?

2 A. Yes.

3 Q. Okay. Do you know when the first time  
4 anyone at Ford explained the 126 report to Eastside Lincoln  
5 Mercury personnel was?

6 A. No, I don't.

7 Q. Did you train either Monica Rivers or  
8 Judy McLaughlin on how to interpret the 126 report?

9 A. No.

10 Q. Would each or both of these persons have  
11 been able to explain to Eastside Lincoln Mercury how to  
12 change their warranty service performance to get out of the  
13 warranty counseling process?

14 A. Yes.

15 Q. Would that ability have been part of  
16 their job description, or something that would have been  
17 expected of that position?

18 A. Yes.

19 Q. Is there any reason why Ford has a  
20 report called a 126 report to specifically track warranty  
21 work versus, I'll call it retail repair work?

22 A. Yeah, we have a report called the  
23 365/200 that tracks retail business, as well as total parts  
24 and service operation.

25 Q. Is there any type of matrix or any type

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1 of counseling program related to the retail side, the retail  
2 repair side?

3 A. That is -- the counseling associated  
4 there is also one of the roles and responsibilities of the  
5 marketing area team, to work with the dealer to improve the  
6 retail business.

7 Q. Is there a policy manual for the retail  
8 sales side, like --

9 A. No, there is not.

10 Q. Is there a matrix, an action matrix for  
11 the retail sales side, like there is on the warranty side  
12 (indicating)?

13 A. No.

14 Q. Is that because the warranty money is  
15 Ford's money, versus the customer's money?

16 A. Yeah.

17 Q. And it's your job, as the FCSD manager,  
18 to keep that money with Ford?

19 MS. MCNELLIE: Object to the form of the  
20 question.

21 Q. Is your job as the retail -- or excuse  
22 me, as the FCSD manager of the Cincinnati region, to keep  
23 the warranty money in Ford as much as possible?

24 MS. MCNELLIE: Objection.

25 Again, go ahead.

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1 THE WITNESS: Do you want me to answer?

2 MS. MCNELLIE: Yes.

3 THE WITNESS: Oh, sorry.

4 A. No, that's not my job.

5 Q. Has any one of your dealer franchisees

6 ever been terminated as a result of warranty repair

7 problems?

8 A. Not in the Cincinnati region.

9 Q. How about in any other region?

10 A. Yes.

11 Q. And what other region?

12 A. I don't know, but I know dealers have

13 been terminated because of warranty abuse.

14 Q. How about anybody that's under your

15 direct supervision, meaning one of your dealer franchisees?

16 A. No.

17 Q. Would you take that very seriously?

18 A. Yes.

19 Q. Have you ever made, including in

20 Eastside Lincoln Mercury's case, a termination

21 recommendation related to a dealer's noncompliance with the

22 warranty and policy manual?

23 A. No.

24 Q. Do you know whether or not a termination

25 recommendation was made in Eastside's case?

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1 A. No.

2 Q. You don't know?

3 A. No, I do know that it wasn't.

4 Q. Okay. Who is Amy Gabrion?

5 A. She works in the global warranty  
6 operations department, in an administrative position.

7 Q. Do you know whether or not Ms. Gabrion  
8 ever recommended that Eastside Lincoln Mercury be  
9 terminated?

10 A. No.

11 Q. You don't know or you --

12 A. No, she has not.

13 Q. Did anyone at Eastside Lincoln Mercury  
14 express to you, at any time, that they felt burdened by the  
15 warranty audit process or the warranty counseling process?

16 A. No.

17 Q. Did anybody at Eastside ever discuss  
18 with you, and I'm saying you, Al Walls, what it could do in  
19 order to remove itself from the warranty counseling process?

20 A. No.

21 Q. Was Eastside Lincoln Mercury, as a  
22 consequence of past audits, contrite, or did they express  
23 that they wanted to do what it took to get out of the  
24 warranty counseling process?

25 A. Yes.

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1 Q. Did you ever receive letters from  
2 Eastside Lincoln Mercury expressing its willingness and  
3 desire to do what was necessary to get out of the warranty  
4 counseling process?

5 A. I am not aware of receiving a letter of  
6 that nature.

7 Q. Do you remember speaking with anyone  
8 from Eastside Lincoln Mercury and having them express to  
9 you, before the 2001 audit, that they were interested in or  
10 willing to do whatever it took to get out of the warranty  
11 counseling process?

12 A. Yes.

13 Q. Who did you speak with?

14 A. Jim Hudson and George Beattie.

15 Q. And what was said during that  
16 conversation?

17 A. Well, this is a conversation that took  
18 place after the first audit in '98. And, you know, they  
19 indicated their willingness to do what was necessary to get  
20 out of the process.

21 Q. Were they ever able to achieve that  
22 goal?

23 A. No.

24 Q. And what was the problem?

25 A. The problem? I'm not sure that there

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1 was a problem that I can speak to here that prevented them  
2 from getting out of the process. Observations made by  
3 auditors would suggest that the supervision in the shop  
4 wasn't as disciplined as it should be.

5 Q. And the supervision they're talking  
6 about is Al Schimweg; is that correct?

7 A. Yeah, who is the current service  
8 manager.

9 Q. Has Al Schimweg been the service manager  
10 since you've been --

11 A. No, Jim Hudson was the service manager  
12 when I first got to the region, and then Jim moved to  
13 another department within that organization, in the Woeste  
14 organization, and then Al took over at that point.

15 Q. Have any of the warranty audits from  
16 Eastside Lincoln Mercury ever revealed greater than  
17 2 percent disallowance, or 2 percent error?

18 A. I do not think that they have.

19 Q. All right. Well, let me ask the  
20 question this way: As part of the 2001 audit, did you do  
21 any review of Eastside Lincoln Mercury's prior performance  
22 before you went to the closing meeting?

23 A. No.

24 Q. Would it have been relevant to you to  
25 look at the historical performance of Eastside Lincoln



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1 Mercury on the warranty audits before discussing the 2001  
2 audit?

3 A. No.

4 Q. What did you do or what was your role at  
5 the 2001 audit meeting, the closing conference?

6 A. Yeah, okay. My role was to give the  
7 dealership and the auditor a forum to review his  
8 observations and recommendations, and to, you know, indicate  
9 to Mr. Woeste what was going to take place as a result of  
10 the findings of this audit.

11 Q. And did the auditor review the findings?

12 A. Yes.

13 Q. Did Mr. Rouse indicate, during that  
14 review, that Eastside Lincoln Mercury could change its  
15 performance on cost per vehicle by installing more wiper  
16 blades?

17 A. No, I don't recall him making that  
18 statement.

19 Q. Did Mr. Rouse indicate anything that  
20 Eastside could do in order to improve its position in regard  
21 to the warranty audit process?

22 A. Yeah, he made recommendations for each  
23 area that he found some disallowances.

24 Q. Can you remember any of those specific  
25 recommendations?

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1 A. No, I can't.

2 Q. Were there a great deal of  
3 recommendations, given the fact that it was \$5900 in  
4 disallowances?

5 A. There were recommendations for each area  
6 that he found charge-backs.

7 Q. Were they fairly modest?

8 A. The amounts?

9 Q. The recommendations, the amounts --

10 A. The amounts were what they were, and the  
11 recommendations are, you know, pretty standard  
12 recommendations of things that needed to take place in order  
13 to administer the warranty in those particular areas.

14 Q. As a consequence of the audit, were you  
15 the person that was given the task of describing what  
16 actions that Eastside would have to take as a consequence?

17 A. Yes.

18 Q. And what actions did you recommend that  
19 Eastside take?

20 A. The actions that I recommended are  
21 spelled out in a letter that I gave to Mr. Woeste at the  
22 time of the meeting.

23 Q. Okay. And those actions would have been  
24 the business counseling meeting with FCSD and the vehicle  
25 division regional manager?

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1 A. Yes.

2 Q. Had such a meeting ever happened in any  
3 of the preceding years?

4 A. Yeah, essentially what that is is the  
5 meeting that, you know, the closing meeting itself. And  
6 typically, Jerry Carter would have been there representing  
7 Lincoln Mercury Division and I would have been there  
8 representing Ford Customer Service Division.

9 Q. So you're saying that under the action  
10 plan, the fact that you were sitting in the closing meeting  
11 with Mr. Carter qualified to satisfy Point 1, which is a  
12 business counseling meeting with FCSD and vehicle division  
13 regional managers?

14 A. Right.

15 Q. So you're saying that this action matrix  
16 doesn't recommend a separate meeting?

17 A. No.

18 Q. And at that meeting, would you have  
19 described to Eastside Lincoln Mercury what needed to be  
20 done, from your standpoint, in order to get them out of this  
21 process?

22 A. Yes.

23 Q. What would Mr. Carter's role have been,  
24 or involvement?

25 A. His role or involvement would have been

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1 as representing the Lincoln Mercury Division, to support the  
2 recommendations that we've made. And as part of that  
3 process, I asked for Mr. Woeste to send me an action plan of  
4 what Eastside Lincoln Mercury is going to do to respond to  
5 the specific recommendations that were made, and to provide  
6 that to me within 30 days of the closing meeting  
7 (indicating).

8 Q. So Jerry just would have been there to  
9 hear what was said?

10 A. (Nodding affirmatively).

11 Q. Is that correct?

12 A. Well, no. He would have been there to  
13 hear what was said, but also any input that he might have as  
14 a result of any of the discussion that takes place. I mean,  
15 he's not just there as a figurehead.

16 Q. Did you have any discussions with Jerry  
17 Carter before the closing meeting that no penalties would be  
18 imposed on Eastside Lincoln Mercury?

19 A. No.

20 Q. Did you have any type of deal or  
21 agreement with Jerry Carter about what actions would be  
22 recommended with regard to Eastside Lincoln Mercury as a  
23 result of the audit?

24 A. No.

25 Q. Do you know if anyone that worked for

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1 you had any discussion or agreement or deal with Jerry  
2 Carter as to what would happen to Eastside Lincoln Mercury  
3 as a consequence of the audit?

4 A. Jorge Castillejo, my office operations  
5 manager, I understand he had conversation with Jerry  
6 regarding the audit finding.

7 Q. And what was that conversation?

8 A. Well, Jerry indicated to him, from my  
9 understanding, that he wouldn't support a termination.

10 Q. So are you telling me that termination  
11 was mentioned at the meeting?

12 A. Pardon me?

13 Q. Was termination mentioned at that  
14 closing conference?

15 A. At the closing conference?

16 Q. Yes.

17 A. Yes.

18 Q. And how was it mentioned?

19 A. It was mentioned in the context that if,  
20 you know, Mr. Woeste didn't accept the consultant, the  
21 \$30,000 consultant, to help him improve his warranty  
22 performance, that termination could be recommended.

23 Q. Had all of Mr. Woeste's warranty audits,  
24 and I'll say Eastside's warranty audits, accumulated or  
25 aggregated more than \$30,000 in charge-backs?

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1 A. No.

2 Q. Do you think that the recommendation of  
3 the in-dealer consulting initiative was extreme, in light of  
4 the findings that were being made on the warranty audits?

5 MS. MCNELLIE: Object to the form.

6 You can answer.

7 A. Yeah, yes.

8 Q. And I want to step back for just a  
9 second. My earlier question was: Did Jerry Carter have a  
10 deal with anybody that worked for you that no actions or  
11 that certain penalties would be changed or described as a  
12 consequence of the audit?

13 A. No.

14 Q. So, to your understanding, there was no  
15 deal with anybody from FCSD and Mr. Carter as to what was  
16 going to happen at the closing conference, in regard to the  
17 audit?

18 A. Yes.

19 Q. Is that correct?

20 A. Yes, that's correct.

21 Q. And to put that another way, was FCSD  
22 going to execute the plan, based on the warranty manual, as  
23 a consequence of the audit findings?

24 A. Could you repeat that, please?

25 Q. As a result of the audit findings, was

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1 FCSD going to make the recommendations that were set forth  
2 in the audit matrix without any changes?

3 A. No.

4 Q. Okay. Go ahead and explain that.

5 A. I'll expand on that.

6 Q. Yeah.

7 A. FCSD is not empowered to do Item No. 7  
8 on the plan.

9 Q. Okay.

10 A. So, therefore, I respond no, that we  
11 were not prepared to do that, because we're not empowered to  
12 do that.

13 Q. Well, under the plan, Item No. 7, which  
14 is termination, only arises if Item No. 6 isn't carried out,  
15 correct?

16 A. Correct.

17 Q. Okay. My question was: Based on the  
18 audit findings of the 2001 audit, were you at FCSD prepared  
19 to make the recommendations contained in the audit matrix  
20 without any changes?

21 A. Yes, yes.

22 Q. And you had no prior agreement or deal  
23 with Mr. Carter to change any part of the recommendation as  
24 to where Eastside Lincoln Mercury would fall in that action  
25 plan, correct?

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1 A. No, did not.

2 Q. After the 2001 audit, was any action  
3 taken against Eastside Lincoln Mercury as a consequence of  
4 the audit?

5 A. No.

6 Q. Has Eastside Lincoln Mercury been taken  
7 out of the warranty audit process?

8 A. No.

9 Q. Where does Eastside Lincoln Mercury now  
10 exist in relation to the warranty audit process?

11 A. I do not know.

12 Q. Have you been following Eastside Lincoln  
13 Mercury's warranty performance on the 126 reports since that  
14 2001 closing conference?

15 A. No, I have not.

16 Q. Would Eastside Lincoln Mercury's  
17 performance on its 126 reports be important to you? And I'm  
18 saying since that 2001 meeting.

19 A. Yes.

20 Q. Is there any reason why you haven't  
21 reviewed those?

22 A. Yeah, because the market area team has  
23 direct responsibility for tracking and following that, and I  
24 defer to them if there's an issue that they think needs to  
25 come to my attention.



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1 Q. Can you tell me, as you sit here today,  
2 what Eastside Lincoln Mercury's status is regarding the  
3 warranty consulting process?

4 A. I do not know what their status is.

5 Q. Does anyone know what Eastside Lincoln  
6 Mercury's status is right now, related to the warranty  
7 consulting process, or the warranty counseling process?

8 A. The market area team members would know,  
9 as well as global warranty operations I'm sure would know.

10 Q. Give me some names, please.

11 A. Randy Baughman is global warranty  
12 operations for the market area team, the customer service  
13 manager is Treva Reid, and the dealer operations manager is  
14 Leisa Byars.

15 Q. During your tenure as the FCSD regional  
16 manager, has Kings Lincoln Mercury been subjected to any  
17 part of the warranty counseling process?

18 A. Yes.

19 Q. When did the first action against Kings  
20 occur?

21 A. I can't recall the exact date.

22 Q. Do you know whether or not that action  
23 occurred before or after April of 2001?

24 A. No, I don't.

25 Q. Do you know whether there is presently

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1 any warranty counseling action pending or occurring with  
2 regard to Kings?

3 A. No, not to my knowledge.

4 Q. You don't think there's any or you just  
5 don't know?

6 A. I don't think there's any.

7 Q. During the last two years, can you  
8 recall if there's been any warranty audits or warranty  
9 reviews of Kings?

10 A. No.

11 Q. You can't recall any?

12 A. I can't recall.

13 Q. Can you recall whether or not there were  
14 any warranty audits of Mr. Dixon?

15 A. Yes.

16 Q. How many warranty audits of Mr. Dixon  
17 occurred?

18 A. I'm aware of two.

19 Q. Were these reviews or were they  
20 full-blown audits?

21 A. They were audits.

22 Q. And do you know what the conclusions of  
23 those audits or the results of those audits were?

24 A. There were charge-backs.

25 Q. And you don't recall if there were any

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1 findings of fraud, correct?

2 A. No, I don't.

3 Q. You may have answered this before, but  
4 during your time here in the Cincinnati region, can you  
5 think of any specific dealers, by name, who were found to  
6 have committed fraud in the warranty process?

7 A. No.

8 Q. Since Mr. Riechert's group's purchase of  
9 the Jim Dixon dealership, have any warranty audits occurred?

10 A. No.

11 Q. Have any warranty reviews occurred?

12 A. Yes.

13 Q. Do you know what the result or the  
14 consequence of that warranty review was?

15 A. No, I don't.

16 Q. Do you know when that warranty review  
17 happened?

18 A. No, I don't.

19 Q. During your tenure here in Cincinnati,  
20 has the Northgate Lincoln Mercury store been reviewed or  
21 audited?

22 A. Not to my knowledge.

23 Q. Has any warranty counseling action been  
24 taken with regard to Northgate?

25 A. Not to my knowledge.

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1 MS. MCNELLIE: Can we take a break?

2 MR. BERBERICH: Sure. Let's go off the  
3 record.

4 (THEREUPON, A SHORT RECESS WAS TAKEN).

5 Q. Mr. Walls, was Riverside Lincoln Mercury  
6 ever part of the warranty counseling process during your  
7 time here?

8 A. Not to my knowledge.

9 Q. How about Lincoln Mercury of Florence or  
10 Sym Fryson?

11 A. Not to my knowledge.

12 Q. What is the purpose of having the Dealer  
13 Principle sign the warranty claims?

14 A. The reason is that the Dealer Principle  
15 has the ultimate responsibility for this activity that takes  
16 place that submits claims to Ford Motor Company for payment.  
17 And we would hope that by asking the dealer to do that, that  
18 the dealer would pay close attention to what is going on in  
19 terms of repairs in his shop, in concert with his service  
20 management.

21 Q. So you don't believe the charge-back  
22 would cause a Dealer Principle to pay close attention to  
23 what's happening in the service department?

24 A. I would hope that that would get the  
25 dealer's attention to do that.

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1 Q. So you're saying the only purpose is to  
2 get the dealer to pay close attention, correct?

3 A. Yeah.

4 Q. Did you have any reason to believe that  
5 Mr. Woeste knew anything at all about auto repair?

6 A. I don't know his background.

7 Q. Okay. Assuming that Mr. Woeste did not  
8 have a background in auto repair, what would the  
9 significance be of him signing each warranty repair claim?

10 A. Well, first of all, the thinking of  
11 having the dealer signing claims is not to analyze how the  
12 repair was done, whether or not it fixed the vehicle. So  
13 we're not looking at it from a technical standpoint. We're  
14 looking at it from an administrative standpoint. And also,  
15 that sends a message to the people in his organization that  
16 he cares enough to be looking at this, and hopefully that  
17 will keep them focused, more focused on doing the things  
18 that we ask them to do, in terms of the policy and procedure  
19 manual.

20 Q. Well, the policy and procedure manual  
21 makes the Dealer Principle accountable for the repairs  
22 regardless of whether he signs them, correct?

23 A. Uh-huh.

24 Q. Is that a yes?

25 A. Yes.

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1 Q. Okay. So this is simply forcing the  
2 dealer to sign each warranty claim to make everybody know  
3 that it's serious?

4 MS. MCNELLIE: Objection.

5 Q. Is that what you're saying?

6 A. I'm saying that that's part of it,  
7 (nodding affirmatively).

8 Q. Is it also a situation where you want to  
9 have the dealer sign off on the warranty claims in case  
10 there's a later finding of fraud?

11 A. No.

12 Q. Okay. Is the sign-off procedure a  
13 stepping stone, in any way, towards termination of the  
14 dealer?

15 A. No.

16 Q. Now, the second item is dealer  
17 disqualification from award programs. Would that include  
18 the LPE program?

19 A. No.

20 Q. I'm reading this document and it says  
21 there are certain ones, and it says with the exception of  
22 LPE and Mercury Advantage; is that correct?

23 A. That's correct.

24 Q. What is the significance of  
25 disqualifying a dealer from the President's Award or Top 100

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1 Club or Premier Club, or any of those types of clubs?

2 A. What is the significance?

3 Q. Correct.

4 A. These are assumptions that I can only  
5 make, but, obviously, that is something that dealers, you  
6 know, aspire to, and dealers that are held in high esteem.  
7 And we look at that as something that a dealer would  
8 probably be concerned about if he or she weren't able to  
9 realize those awards and recognition.

10 Q. Are those clubs FCSD clubs or are they  
11 Lincoln Mercury clubs?

12 A. Clubs, I'm not sure what you're  
13 referring to when you say "clubs."

14 Q. Like the President's Award, the Top 100  
15 Club --

16 A. They're company recognitions.

17 Q. All right. But they're not FCSD  
18 programs?

19 A. No.

20 Q. So FCSD is making a recommendation that  
21 Eastside Lincoln Mercury be disqualified from Lincoln  
22 Mercury programs, other than LPE and Mercury Advantage; is  
23 that correct?

24 A. That's correct.

25 Q. Now, are you simply making a

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1 recommendation? It says dealer is disqualified, it doesn't  
2 say --

3 A. No, that's a disqualification.

4 Q. Okay. It's not a recommendation?

5 A. It's not a recommendation.

6 Q. And then it also says that the dealer is  
7 suspended or removed from additional franchise  
8 opportunities; is that correct?

9 A. Yes.

10 Q. And that's an FCSD determination, right  
11 away?

12 A. No, that is a company determination,  
13 that isn't an FCSD determination.

14 Q. Well, if someone falls within your  
15 matrix and they run afoul of Step No. 2, then they're  
16 disqualified, automatically, from other dealership  
17 opportunities, correct?

18 A. Yeah, I believe so.

19 Q. Okay. Is that a significant financial  
20 burden on a dealer?

21 A. It could be.

22 Q. Do you know whether or not, at the time  
23 that this April audit was being conducted, that Mr. Woeste  
24 was discussing the purchase of another Ford or  
25 Ford-affiliated dealership?



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1 A. No.

2 Q. Had he, in fact, been discussing the  
3 purchase of a Ford or Ford-affiliated dealership, do you  
4 think that the \$5,900 in charge-backs that were levied  
5 against Eastside Lincoln Mercury was fairly modest, in  
6 comparison to losing a dealership opportunity?

7 MS. MCNELLIE: I'll object to the form  
8 of the question.

9 You can answer it.

10 A. Yeah.

11 Q. What I'm saying is that sounds like a  
12 very serious penalty for the amount of money that we're  
13 talking about; do you agree?

14 A. Yes.

15 Q. Okay. Dealership authorized AWA  
16 privileges are removed. What is AWA?

17 A. That stands for after warranty  
18 adjustments. That's money that a dealer can use to resolve  
19 a customer complaint without contacting Ford Motor Company  
20 to do it, and it's when a customer is beyond the stated  
21 warranty for the vehicle.

22 Q. So your penalizing the dealer for  
23 performing service that Ford would otherwise pay for?

24 A. Yes.

25 Q. Now, Penalty No. 5 is the dealership is

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1 decertified from LPE or Mercury Advantage for one year.  
2 That's a disqualification that's fairly significant,  
3 correct?

4 A. Yes.

5 Q. Do you know how much money LPE  
6 certification or Mercury Advantage certification means to a  
7 dealer in a given year?

8 A. Not off the top of my head.

9 Q. Okay. Are we talking about in the  
10 hundreds of thousands of dollars?

11 A. Depends on how many cars a dealer sells.

12 Q. Let's say a dealer sells 150 cars. How  
13 much money, roughly, in your understanding, would be in  
14 jeopardy?

15 A. About 45 grand. I think it's \$300 a  
16 unit.

17 Q. And again, one of the recommendations  
18 that you made in your audit was decertification from LPE; is  
19 that correct?

20 A. No.

21 Q. Did that fall within the matrix?

22 A. No.

23 Q. Okay. Now, the matrix that we're  
24 talking about for Eastside in the April audit was the  
25 additional follow-up Audit Matrix III, correct?

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1 A. Yes. And also it's under the category  
2 of administrative, if you look at the top there  
3 (indicating), not fraud or fraudulent, and I think that's  
4 what you were referring to when you asked me those previous.

5 Q. Okay. So we're in the low cost, low  
6 findings, and that would be one, two --

7 A. And six.

8 Q. -- and six. Okay. And I apologize if I  
9 was reading off the wrong column.

10 But No. 6 is the warranty in-dealer  
11 consulting initiative; is that correct?

12 A. That's correct.

13 Q. I think you already agreed that's a very  
14 severe penalty for the \$6000 or under that was at issue in  
15 this case, correct?

16 A. Yes.

17 Q. Did you review Eastside Lincoln  
18 Mercury's warranty traffic versus its warranty gross dollars  
19 for the last couple of years?

20 A. Not specifically, but I look at that, in  
21 terms of the dealers in the region.

22 Q. Okay. And if we exclude last year,  
23 where you say warranty experience got better, in the  
24 previous couple of years, you would have anticipated that  
25 Eastside Lincoln Mercury would have shown both an increase

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1 in warranty traffic and an increase in warranty dollars?

2 A. Yeah, because of the amount of recalls  
3 we were doing.

4 Q. Do you recall Mr. George Beattie asking  
5 you, in one of these dealer meetings in fact, whether or not  
6 everyone else's warranty claims and warranty dollars were  
7 going up?

8 A. I remember him asking me a question at a  
9 meeting that I held, and that could be the question that he  
10 asked me, but I can't remember specifically, verbatim, what  
11 he asked and that it was exactly what you just said. But I  
12 know the meeting that you're referring to, and I remember  
13 George asking me a question, and I can't remember exactly  
14 what the question was.

15 Q. But you recall commenting at that  
16 meeting that the warranty claims and warranty dollars for  
17 dealerships in your region were increasing?

18 A. I don't recall making that statement at  
19 the meeting, and I don't recall what the response was to  
20 that specific question that he asked.

21 Q. Well, let me ask you a broad question.  
22 If, at the time, and I'll just say 1999 through 2001, that,  
23 region-wide, dealers were showing an increase in traffic and  
24 an increase in dollars, and Eastside Lincoln Mercury was  
25 showing an increase in traffic and a decrease in dollars,

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1 and I'm talking about warranty work, can you give me an  
2 explanation as to why that was occurring?

3 A. I don't know specifically why it was  
4 occurring, unless I was looking at the work that was coming  
5 in to the dealership. When you look at the volume of  
6 traffic versus the dollar volume of traffic, in terms of  
7 vehicles coming in versus the dollars, you know, it would  
8 tend to say maybe the mix of repairs were lower cost  
9 repairs, you know, that type of thing (indicating), that  
10 would give you a reduced dollar amount year over year, even  
11 though you got more traffic coming in to the dealership  
12 (indicating).

13 Q. Does the presence of more certified  
14 master technicians at Eastside Lincoln Mercury increase the  
15 likelihood that they will do the more difficult repairs?

16 A. They are capable, because of their skill  
17 set, to do just about anything, if they're masters.

18 Q. Has the region, and I'll just say FCSD  
19 in the region, ever referred specific problem cars to  
20 Eastside Lincoln Mercury to work on?

21 A. I'm not privy to that, but I -- it could  
22 happen, because we've got engineers out there in the  
23 marketplace that know the technicians, they know who's good  
24 and who isn't, and they might do that from time to time.  
25 So, it's a possibility.

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1 Q. But you can't recall any specific  
2 referrals to Eastside Lincoln Mercury because of its service  
3 department?

4 A. No.

5 Q. Did you ever receive an e-mail from  
6 Jerry Carter, after the results of the warranty audit of  
7 2001 were made public, that suggested that no penalty be  
8 given to Eastside Lincoln Mercury?

9 A. No penalty? I do not recall getting an  
10 e-mail from Jerry saying that no penalty should be --

11 Q. Was it fair to say that since the  
12 April 2001 audit, that no penalty has been taken against  
13 Eastside Lincoln Mercury related to that audit?

14 A. Yes, that's correct.

15 Q. In fact, no action has been taken  
16 against Eastside Lincoln Mercury, of any type, related to  
17 that audit; is that correct?

18 A. That's correct.

19 Q. Do you know how that action was stopped,  
20 or what led to the suspension of any of those  
21 recommendations?

22 A. Because of the lawsuit that was filed.

23 Q. Was that recommendation memorialized in  
24 any documents that you saw? And the recommendation I'm  
25 talking about is to take no action because of the lawsuit.

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1 A. No.

2 Q. Do you know whether or not Jerry Carter  
3 made a recommendation of no action be taken without regard  
4 to the lawsuit, as a result of the audit?

5 A. I'm not sure what you mean when you say  
6 no action. And if you can define that maybe a little bit  
7 more, I can respond to that.

8 Q. Well, if the recommended actions were  
9 one, two and six, and you believe that one already occurred  
10 as a result of the closing conference, --

11 A. Uh-huh.

12 Q. -- what happened to two and six?

13 A. Six -- two, I can't remember what two  
14 is. But six --

15 Q. Disqualification from programs.

16 A. From programs, okay.

17 Two is what it is, disqualification from  
18 programs. Six is the consultant. And I know that we,  
19 Jerry, felt that that was harsh, to use that term. And  
20 also, it defaults to No. 7 if the dealer doesn't take it, so  
21 that would be -- and he was against termination.

22 Q. Did you, as the FCSD Regional Manager,  
23 have any authority to suspend any of the requirements of the  
24 audit matrix?

25 A. No.

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1 Q. What I meant by that is if you thought,  
2 yourself, that Step No. 6 was not warranted, as a result of  
3 the April 2001 audit, could you have said I don't want to  
4 impose No. 6?

5 A. I could have said that, but I don't make  
6 the final decision on No. 6. I can give my input to No. 6,  
7 but I don't make that final decision.

8 Q. Who makes the decision with regard to  
9 whether No. 6 is --

10 A. GWO essentially makes that call, and the  
11 matrix, which represents all of this, was determined by the  
12 management of marketing sales and services, which is the  
13 leadership of customer service, the leadership of Ford  
14 Division, and the leadership of Lincoln Mercury Division.

15 Q. I guess my question, to make it a little  
16 simpler, is: If you believed, after reviewing the audit,  
17 that any one of those steps, whether one, two or six, were  
18 not merited or not warranted to fix the problem, could you  
19 have suspended any one of those, or dropped any one of  
20 those?

21 A. No.

22 Q. So you would have simply had to follow  
23 the terms of the matrix to the letter and make that  
24 recommendation to global warranty operations, is that  
25 correct?



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1 A. Yes.

2 Q. And then would global warranty  
3 operations make that recommendation to the Lincoln Mercury  
4 Division?

5 A. Yes, they would consult with Lincoln  
6 Mercury Division before a final determination was made. You  
7 know, they want to know where we stand on it, they want to  
8 know where I stand on it, they want to know where Lincoln  
9 Mercury, or Jerry Carter in this case, stands on it, and  
10 then the decision would be made from there. But, you know,  
11 we have input, but we are not the final say.

12 Q. Did you give any input to anybody that  
13 the results of the 2001 audit, in light of the other audits,  
14 revealed nothing that would merit the in-house consultant?

15 A. Yeah, I didn't agree with that, and I  
16 didn't agree with termination.

17 Q. Did you agree with suspension from the  
18 dealership franchise opportunities?

19 A. Yes. I -- well, I won't say I agreed  
20 with that. I did not disagree with it.

21 Q. Did you send any e-mail or any  
22 correspondence to anybody at Ford or Lincoln Mercury  
23 Division, expressing your disagreement with the  
24 recommendations made in the matrix?

25 A. Only with regard to the termination.

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1 Q. And to whom did you express that feeling  
2 or that sympathy?

3 A. That was expressed in a request by Amy  
4 Gabrion, who represented global warranty operations.

5 Q. What did you tell Amy?

6 A. Essentially that, you know, Jerry Carter  
7 didn't agree with termination and I concurred with his  
8 observation as well.

9 Q. And to make it simple, what was the  
10 basis of your disagreement? Why didn't you recommend  
11 termination?

12 A. Well, you know, because of the level of  
13 charge-back and, you know, the relationship that, you know,  
14 we have with the dealership. And I didn't believe that this  
15 was, you know, that there was anything here that was  
16 contrived by, you know, the Dealer Principle or anything of  
17 that nature. There was no fraud. There was nothing  
18 fraudulent. And that's the reason why.

19 Q. Can you explain to me what the term  
20 "variance" means in regard to the 126 report?

21 A. Yes. A variance from 0.5, when they  
22 look at each particular component category, in terms of  
23 standard deviation, 0.5 is the average for all of the  
24 dealers in the group. And your variation from 0.5, higher,  
25 signals a code which puts you in the position where you're

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1 higher than the group, and at the extent that it requires  
2 something to look at (indicating). And of course if it's  
3 0.5 or lower, then you're below the group and there isn't  
4 any reason to actually take a look.

5 Q. So is the variance that's described on  
6 the 126 report based on a standard deviation analysis?

7 A. Yes.

8 Q. Do you know if Ms. Rivers knows what a  
9 standard deviation is?

10 A. Yes.

11 Q. Have you explained that to her?

12 A. I haven't, but she's been in training  
13 where it's been explained.

14 Q. Do you know whether Ms. McLaughlin knows  
15 what a standard deviation?

16 A. Yes. She's been in training where it's  
17 been explained as well.

18 Q. What does the general term standard  
19 deviation refer to?

20 A. I'm not -- you know, I don't have the  
21 definition to really define that for you. I just kind of  
22 follow the number.

23 Q. Sure. I understand you're not a  
24 statistician, but do you have any understanding of what a  
25 standard deviation means?

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1 A. Yeah, I -- my interpretation of that is  
2 when you do an analysis of the performance of a group, where  
3 you get a level playing field is what becomes your standard,  
4 in terms of what your measuring. And then as you get  
5 players within your group that are higher than that  
6 standard, that becomes the variance from your standard  
7 deviation.

8 Q. Okay. Now, even if a person varies from  
9 that, we'll just call it what the mean is, and that variance  
10 is so big that it violates the standard deviation rule, does  
11 that, in and of itself, mean that the dealer is doing  
12 anything wrong?

13 A. No.

14 Q. And if somebody throws codes all over  
15 the 126 report, is it still possible that the dealer is  
16 doing nothing wrong?

17 A. Yes.

18 Q. And with regard to Eastside Lincoln  
19 Mercury and the codes that were thrown in its reports, was  
20 all that was determined to be wrong administrative  
21 compliance with the warranty program?

22 A. Yes.

23 Q. Did Jerry Carter ever review the 126  
24 reports from Eastside Lincoln Mercury?

25 A. Not to my knowledge.

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1 Q. Would they have been available to him as  
2 regional manager of the Lincoln Mercury --

3 A. Yes.

4 Q. Would they have been available to him on  
5 the computer system?

6 A. No, he probably would have had to  
7 request them from us. I mean, we would have to e-mail it to  
8 him.

9 Q. Do you recall whether Mr. Carter, or  
10 anyone under his employ, ever requested a 126 report of  
11 Eastside Lincoln Mercury?

12 A. No, I'm not.

13 Q. Did Mr. Carter ever talk to you or  
14 anyone else at FCSD regarding Eastside Lincoln Mercury's  
15 placement in the warranty counseling process, other than  
16 after the April 2001 audit?

17 A. No.

18 Q. You don't remember Jerry ever talking to  
19 you about Eastside's participation in the process, other  
20 than the April audit?

21 A. No.

22 Q. Is that correct?

23 A. Yes, that's correct.

24 Q. Okay. Have you ever heard of a tool  
25 that's used at Lincoln Mercury, or at Ford, to help analyze

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00110

1 the dealership's performance and make some recommendations  
2 or changes on how to improve that performance?

3 MS. MCNELLIE: Performance as to what?

4 MR. BERBERICH: Retail performance, like  
5 a business plan that the Lincoln Mercury Division does with  
6 its dealers.

7 A. Lincoln Mercury, I'm aware that they  
8 have a process to review a dealership's activity. I don't  
9 know what the exact name of it is.

10 Q. Have you ever heard the term  
11 "forecasting tool," or "business planning tool," or anything  
12 like that?

13 A. Yeah, I've heard of those terms.

14 Q. Do you know whether or not one of  
15 Eastside Lincoln Mercury's areas in which it could improve  
16 would be more warranty sales?

17 A. No.

18 Q. Okay. Would that surprise you if that  
19 was one of Eastside Lincoln Mercury's areas in which it  
20 needed to improve?

21 A. Yes, it would.

22 Q. Why would that surprise you?

23 A. Because that is not an area that you  
24 basically grow your business. You take care of what comes  
25 in the door. So, you know, you don't counsel a dealer to

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1 increase a particular area of business that Ford Motor  
2 Company subsidizes to grow your business.

3 Q. Did anyone from the Lincoln Mercury  
4 Division ever talk with you about purchasing or selling  
5 Eastside Lincoln Mercury?

6 A. No.

7 Q. Were you even aware that there were any  
8 discussions about anyone purchasing Eastside Lincoln  
9 Mercury?

10 A. No.

11 Q. Is that correct?

12 A. Yes.

13 MR. BERBERICH: Okay. Let's take a  
14 break for just a few minutes.

15 (THEREUPON, A SHORT RECESS WAS TAKEN).

16 (THEREUPON, PLAINTIFF'S EXHIBIT NO. 10  
17 WAS MARKED FOR IDENTIFICATION).

18 Q. Mr. Walls, have you had a chance to  
19 review the exhibit I just marked as Exhibit 10 there  
20 (indicating)?

21 A. Yes.

22 Q. Is that a letter that was sent out  
23 jointly by you and Mr. Carnegie, describing an October  
24 meeting for the retail service growth for the Mercury Elite  
25 Club?

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00112

1 A. Yes.

2 Q. And what part of that handout, or  
3 whatever, did you prepare, or assist in preparing, under the  
4 FCSD division?

5 A. Everything except the last page  
6 (indicating).

7 Q. So, the first page, do you know if it  
8 was your office or Mr. Carnegie's that prepared that letter?

9 A. It was my office.

10 Q. Okay. And then the second page,  
11 "getting things done, dealer feedback," is that something  
12 that your office prepared?

13 A. Yes.

14 Q. Did you actually prepare that document?

15 A. No.

16 Q. Who in your office did?

17 A. I think this was a joint effort by Jorge  
18 Castillejo and Monica Rivers.

19 Q. And then the third, fourth and fifth  
20 pages look like a, like they're all the same document, or  
21 part of the same handout; is that correct?

22 A. That's correct.

23 Q. Who prepared that section, which is  
24 entitled or headed "Retail Repair Shop?"

25 A. Monica Rivers.



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00113

1 Q. And under the heading "Retail Repair  
2 Shop," when it describes success, as it looks like to a  
3 Dealer Principle, one of the sub headings, I think it's the  
4 fourth down, says "double-digit growth increases year over  
5 year." What does that refer to?

6 A. Double-digit growth in terms of repair  
7 traffic and dollars per repair order. And this is retail.

8 Q. I understand.

9 A. Okay.

10 Q. How do you stimulate customer paid  
11 repairs into double-digit growth?

12 A. Advertise, marketing programs, specials,  
13 coupons, open full days on Saturdays, business on Saturday  
14 like any other day of the week, convenience, price  
15 competitively, all those things.

16 Q. Is there any comparative program that  
17 FCSD does that outlines how warranty repair sales can be  
18 increased?

19 A. No.

20 Q. Is there any reason for that?

21 A. Yes.

22 Q. And what's the reason?

23 A. Growing the warranty business isn't a  
24 focus of Ford Motor Company, as opposed to growing the  
25 retail business.

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1 Q. The last page talks about car sales,  
2 basically; is that correct?

3 A. Yes, that's correct.

4 Q. Did Steve Carnegie and/or Jerry Carter  
5 contact you regarding how to change Eastside Lincoln  
6 Mercury's status from a loss dealer to a profitable dealer?

7 A. Jerry Carter did not contact me, but I  
8 know that there was some dialogue with the zone manager from  
9 Lincoln Mercury and our market area team on those issues.

10 Q. Who was the zone manager and who was  
11 your market area team?

12 A. The zone manager was Patrick LeTart for  
13 Lincoln Mercury; and the market area team was, you know,  
14 Monica Rivers, who led the team of Treva Reid and Jeff  
15 Hazel; and Jim Meadors, at the time, was the RMM.

16 Q. Do you know what recommendations were  
17 made as a result of that contact?

18 A. No, I don't.

19 Q. Do you know if FCSD did anything at all  
20 to help Eastside Lincoln Mercury improve its loss dealer  
21 status?

22 A. No, I do not.

23 Q. Do you recall that at the opening  
24 meeting of Eastside Lincoln Mercury's 2001 audit, that 126  
25 reports from other dealerships were inadvertently

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1 distributed to Eastside personnel?

2 A. No, I do not.

3 Q. You didn't hear about that?

4 A. No.

5 Q. Okay. Is there anyone that selects how  
6 a person, or a dealership, excuse me, gets placed into the  
7 warranty counseling process?

8 A. GWO is where it initiates.

9 Q. Who is GWO again?

10 A. GWO is global warranty operations.

11 Q. If I pulled the 126 reports from every  
12 Ford affiliated dealership in the Cincinnati region, am I  
13 going to find codes on every one of those reports, or nearly  
14 every one of those reports?

15 A. No.

16 Q. Okay. How many of those reports,  
17 percentage-wise, am I going to see codes on?

18 A. I cannot tell you that.

19 Q. Is there a step where a dealer is  
20 identified as having thrown codes on their 126 report, and  
21 then that dealer gets placed into the warranty counseling  
22 process?

23 A. Could you clarify what you mean by  
24 "thrown codes?"

25 Q. Okay. By "thrown codes" I mean showing

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1 codes on their 126 report.

2 A. Oh, okay. And not be on the --

3 Q. And being placed in the warranty

4 consulting program.

5 A. I'm -- I don't follow you. I'm sorry.

6 Q. How does somebody who throws codes, or

7 shows codes on their 126 report, get into the warranty

8 consulting program?

9 A. If they show the codes over a six-month  
10 period, that is what triggers them for the warranty

11 consulting process.

12 Q. How often do they have to show those

13 codes over a six-month period?

14 A. Well, six consecutive periods.

15 Q. Is there a number of codes that they  
16 have to show over that period of time, or is there certain  
17 codes that they have to show?

18 A. Yes. There's three specific areas that  
19 we look at. And I'll mention them again, it's cost per  
20 vehicle serviced, it's repairs per 1000 vehicles serviced,  
21 and cost per repair. So, in one of those three categories,  
22 if they show a code for a period of six months, they then  
23 will become eligible to be on the process.

24 Q. And you just mentioned that they would  
25 be eligible. Who then makes the decision whether these

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1 repeat violaters become eligible for the warranty process?

2 A. Global warranty operations.

3 Q. Does global warranty operations consult  
4 with the region before that dealer is placed into the  
5 program?

6 A. Yes, they do.

7 Q. And how does that happen, or what goes  
8 on?

9 A. They'll send us an e-mail, listing the  
10 dealers and what requirement needs to take place with regard  
11 to the warranty consulting process, and they ask us for any  
12 feedback regarding those dealers and with regard to what the  
13 plan to do is. And we respond back to them if we have any  
14 input that has any bearing on them being in that segment of  
15 the process. And then based on that response, then we move  
16 forward with whatever needs to be done in the process.

17 Q. So, at that initial phase, you could  
18 make a recommendation on behalf of FCSD that that Dealer  
19 Principle not be placed in the consulting process, the  
20 warranty counseling process?

21 A. We could make a recommendation with  
22 whatever the facts that we have to bring to bear.

23 Q. Okay. Do you contact the Dealer  
24 Principle to let them know that a recommendation has been  
25 made that they be placed in that system?

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1 A. I do not do that. This goes to the  
2 dealer operations manager for the particular dealer in  
3 question, and they make that call.

4 Q. Okay. They make the call as to --

5 A. Right, they make the call whether it's  
6 necessary to consult with the dealer about being on the  
7 process, if there's something that's happening in the  
8 dealership that might prevent us from going in at that point  
9 and ask for a postponement. Typically, we don't make that  
10 goal. We don't make whatever the request is go away. We  
11 might get it postponed because of something significant  
12 happening at the dealership level, but, essentially, that's  
13 how it happens.

14 Q. Okay. But can you, at the regional  
15 level, cancel or terminate the warranty consulting process?

16 A. No, no, I can't.

17 Q. Does the e-mail from global warranty  
18 operations also go to Lincoln Mercury, to the retail side?

19 A. No, it just goes to FCSD.

20 Q. Okay. Then at each, I'll just say  
21 re-review or re-audit stage, does an e-mail come from global  
22 warranty operations to FCSD to advise that this next step is  
23 recommended?

24 A. Yes.

25 Q. And again, at that point, can you, as

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1 the regional manager of FCSD, or the DOM, I guess DOM,  
2 recommend that that next step not be taken?

3 A. No, we can't.

4 Q. Is there any process or procedure that  
5 FCSD has that if a dealer participates in this program over  
6 several years and the findings are insignificant, that the  
7 dealer can be taken out of the warranty consulting program?

8 A. That is not part of the process, as we  
9 know it today.

10 Q. Do you think that there should be some  
11 mechanism for getting a dealer out of the warranty  
12 counseling process if the findings over a span of years have  
13 been significant?

14 MS. MCNELLIE: Objection.

15 A. I think it's something that is worth  
16 looking at.

17 Q. Okay. In your conversations with  
18 Eastside Lincoln Mercury personnel, did they express to you  
19 their frustration about remaining in the warranty counseling  
20 process?

21 A. No.

22 Q. Did anyone at Eastside Lincoln Mercury  
23 express to you that they felt like they were being  
24 persecuted as a consequence of the warranty consulting  
25 process?

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1 A. No.

2 Q. In terms of who gets audited and whether  
3 or not the next step in the audit process is taken, are you  
4 saying that Lincoln Mercury Division has no input in that  
5 process?

6 A. No.

7 Q. Is that what you're saying?

8 A. Yes.

9 Q. Okay. But after the audit is performed,  
10 and before the, I'll just say the matrix-driven  
11 recommendations are made, then does Lincoln Mercury Division  
12 have a say in what happens in response to the audit?

13 A. Yes.

14 MR. BERBERICH: Okay. That's all the  
15 questions I have. Thank you.

16 MS. MCNELLIE: We would like to read it.

17

18 (ALLEN W. WALLS)

19 (DEPOSITION CONCLUDED)

20

21

22

23

24

25



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1 C E R T I F I C A T E

2 STATE OF OHIO )  
3 ) SS

4 COUNTY OF HAMILTON )

5 I, Jill M. Dragon Sandy, the undersigned, a duly  
6 qualified and commissioned notary public within and for the  
7 State of Ohio, do hereby certify that before the giving of  
8 his aforesaid deposition the said ALLEN W. WALLS, was by me  
9 first duly sworn to depose the truth, the whole truth, and  
10 nothing but the truth; that the foregoing is the deposition  
11 given at said time and place by the said ALLEN W. WALLS;  
12 that said deposition was taken in all respects pursuant to  
13 agreement as to time and place, that said deposition was  
14 taken by me in stenotypy and I am neither a relative of, nor  
15 attorney for, any of the parties to this cause, nor relative  
16 of nor employee of any of their counsel, and have no  
17 interest whatever in the result of the action.

18 IN WITNESS WHEREOF, I hereunto set my hand and official  
19 seal of office, Cincinnati, Ohio this \_\_\_\_\_ day  
20 of \_\_\_\_\_, 2003.

21

\_\_\_\_\_  
Jill M. Dragon Sandy-Notary Public  
My commission expires: January 31, 2005.

22

23

24

25